

ADAM PERRY KINCAID

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

-----)
OHIO A. PHILIP RANDOLPH INSTITUTE;)
LEAGUE OF WOMEN VOTERS OF OHIO;)
THE OHIO STATE UNIVERSITY COLLEGE)
DEMOCRATS; NORTHEAST OHIO YOUNG)
BLACK DEMOCRATS; HAMILTON COUNTY)
YOUNG DEMOCRATS; LINDA GOLDENHAR;)
DOUGLAS BURKS; SARAH INSKEEP;)
CYNTHIA LIBSTER; KATHRYN DEITSCH;)
LUANN BOOTHE; MARK JOHN GRIFFITHS;)
LAWRENCE NADLER; CHITRA WALKER;)
TRISTAN RADER; RIA MEGNIN;)
ANDREW HARRIS; AARON DAGRES;)
ELIZABETH MYER; BETH HUTTON;)
TERESA THOBABEN; and CONSTANCE RUBIN)

Plaintiffs,

vs.

RYAN SMITH, Speaker of the Ohio)
House of Representatives; LARRY)
OBHOF, President of the Ohio Senate;)
and JON HUSTED, Secretary of State)
of Ohio, in their official)
capacities,)

Defendants.

-----)

DEPOSITION OF ADAM PERRY KINCAID

Washington, D.C.

December 4, 2018

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

JOB NO: 149802

ADAM PERRY KINCAID

Deposition of ADAM PERRY KINCAID, held at
the offices of:

Covington & Burling
850 10th Street, NW
Washington, D.C. 20001

Taken pursuant to notice before Tina M.
Alfaro, a Notary Public within and for the District
of Columbia.

ADAM PERRY KINCAID

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

COVINGTON & BURLING

BY: ROBERT FRAM, ESQ.

ROBERT DAY, ESQ.

One Front Street

San Francisco, CA 94111

ON BEHALF OF THE LEGISLATIVE DEFENDANTS:

OGLETREE DEAKINS NASH SMOAK & STEWART

BY: ALYSSA RIGGINS, ESQ.

4208 Six Forks Road

Raleigh, NC 27609

ON BEHALF OF THE INTERVENOR DEFENDANTS:

BAKER HOSTETLER

BY: KATHERINE McKNIGHT, ESQ.

1050 Connecticut Avenue Northwest

Washington, DC 20036

ADAM PERRY KINCAID

APPEARANCES: (Cont'd)

ON BEHALF OF THE DEPONENT:

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY

BY: SHAWN SHEEHY, ESQ.

PHILLIP GORDON, ESQ.

JASON TORCHINSKY, ESQ.

45 North Hill Drive

Warrenton, VA 20186

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1 ADAM PERRY KINCAID

2 (Witness sworn.)

3 WHEREUPON:

4 ADAM PERRY KINCAID,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. FRAM:

9 Q. My name's Robert Fram. I represent the
10 Plaintiffs in this case.

11 Could you please state your full name for
12 the record.

13 A. Adam Perry Kincaid.

14 MR. FRAM: Do you want to have others state
15 their appearances?

16 MR. SHEEHY: Shawn Sheehy on behalf of
17 Mr. Kincaid.

18 MR. GORDON: Phillip Gordon on behalf of
19 Mr. Kincaid.

20 MR. SHEEHY: Mr. Torchinsky will be joining
21 us shortly, but he will be here also on behalf of
22 Mr. Kincaid.

23 MS. RIGGINS: Alyssa Riggins on behalf of
24 the legislative Defendants.

25 MS. McKNIGHT: Kate McKnight on behalf of

1 ADAM PERRY KINCAID

2 intervenor Defendants.

3 BY MR. FRAM:

4 Q. Mr. Kincaid, have you ever been deposed
5 before?

6 A. No.

7 Q. Well, I'd like to go over a few sort of
8 basics in terms of the process. It might help
9 things go more smoothly. Of course, you're here
10 under oath. It seems informal, but it's actually a
11 formal legal proceeding.

12 The court reporter's taking down a
13 transcript, creating a little booklet of everything
14 we say, and the important part about that is unlike
15 a lot of conversations in life where people fill in
16 each other's sentences it's sometimes what we'll
17 bluntly call interrupting, which we try not to do
18 that here the best we can. I'll do my best and ask
19 you to do yours. It's easier for other people to
20 read the booklet later.

21 Now, I try to ask clear questions but don't
22 always succeed. If something I ask isn't clear,
23 sometimes your counsel may object, but even if he
24 doesn't object please tell me, I'm sorry, would you
25 please clear that up and I'll try harder.

1 ADAM PERRY KINCAID

2 There are two different things counsel tend
3 to say in depositions. I won't speak for your
4 counsel here because I'm bad at predictions, but
5 they tend to do two different things. They tend to
6 make objections and they tend to make instructions.
7 They're different.

8 Unlike in court proceeding where someone --
9 most likely on television or in movies there's an
10 objection and the witness waits until the judge
11 rules and there's a lot of drama. In a deposition
12 objections are made to preserve a record, but
13 questions still have to get answered.

14 Instructions are different. When counsel
15 instructs you not to answer, then you should not
16 answer. If we wind up disagreeing with your
17 counsel's instruction we'll take that up with the
18 judge at a later time. We try to keep those short,
19 we try not to get into speeches on both sides, we
20 try to move things along, not waste your time, but
21 those are the big differences.

22 Do you understand what I've said so far?

23 A. Yep.

24 Q. Feel free to take a break any time you need
25 one. There's one request I make which is to please

1 ADAM PERRY KINCAID

2 not to take a break when I've asked -- when a
3 question I've asked is still out there unless,
4 unless you think you need to talk to your counsel
5 about a question of privilege. Usually it's
6 attorney-client privilege, but there might be some
7 other privilege. If you need legal advice before
8 you can answer a question that's different, but if
9 I've asked you a question and you feel like it's
10 time for a break, I appreciate if you could answer
11 the question and then we can take a break.

12 A. Yep.

13 Q. Is there any reason you can't give full,
14 complete, and truthful testimony today?

15 A. No.

16 Q. Medications of any kind that might be of
17 concern?

18 A. No.

19 Q. Any questions about anything I just said?

20 A. No.

21 Q. You received a subpoena for documents; do
22 you recall that?

23 A. Yes.

24 Q. Did you go look for some documents after
25 you got them?

1 ADAM PERRY KINCAID

2 A. I did.

3 Q. And what did you do?

4 A. I did a keyword search for documents
5 relating to the Ohio congressional map.

6 Q. And where did you look?

7 A. I looked on my computer and on an external
8 hard drive.

9 Q. And did you look at any hard copy files or
10 just the computer and the hard drive?

11 A. I don't have any personal hard copy files.

12 Q. Let's take one at a time and let's talk
13 about the computer for a bit. Was this a computer
14 that you were working with back in 2011?

15 A. No.

16 Q. Is this a computer that you later
17 transferred 2011 files to?

18 A. It would have, yes, a few files from 2011.

19 Q. Were you in a different job then?

20 A. Yes.

21 Q. So you were able to take some of those
22 files to your present job; is that right?

23 A. Yes.

24 Q. I should back up. Is this computer a work
25 computer or a personal computer?

1 ADAM PERRY KINCAID

2 A. Work computer.

3 Q. Did you find any documents on your work
4 computer from 2011?

5 A. Yes.

6 Q. What kind of documents did you find?

7 MR. SHEEHY: I'm going to object there
8 since we have withheld documents as privileged under
9 the First Amendment. We've given you the affidavit
10 describing in general subject matter terms what
11 those documents are, but I'm going to instruct the
12 witness -- unless you can answer the question in the
13 same general subject matter terms, I'm going to
14 instruct the witness not to answer the question or
15 reveal the substance of any of those documents.

16 MR. FRAM: Let me see if I can sharpen the
17 question a little and help us get past this because
18 I wasn't actually asking about the substance, but
19 thank you for that.

20 BY MR. FRAM:

21 Q. I was asking about the kind of documents
22 you found. Were they -- for example, did you find
23 any Maptitude files?

24 MR. SHEEHY: You can answer the question.

25 THE WITNESS: I'm just trying to think.

1 ADAM PERRY KINCAID

2 MR. SHEEHY: If you know.

3 BY THE WITNESS:

4 A. There was -- yes, I have Maptitude -- well,
5 I have census data from 2010 from Ohio which I would
6 have used in Maptitude and then a block assignment
7 file from the enacted map.

8 Q. Anything else?

9 A. In regards to Maptitude, is that what
10 you're asking?

11 Q. Yes, please.

12 A. Yes, that's all.

13 Q. You called it a block assignment file.
14 What is a block assignment file?

15 A. A block assignment file is a file that
16 matches census geography to a district. So it would
17 be a block code that's created from the Census
18 Bureau. It's two columns basically, if you think
19 about it as an Excel document, where one column is
20 the district number and one column is the block, the
21 census block, and that's all it is.

22 Q. For this -- I take it you take this file
23 and you can load it into Maptitude; is that right?

24 A. You would be able to load it into
25 Maptitude.

1 ADAM PERRY KINCAID

2 Q. And then if you drew district lines around
3 a census block -- a group of census blocks you could
4 see which census blocks would be in the district
5 or --

6 MR. SHEEHY: I'm just going to make sure.
7 You're asking just in general?

8 MR. FRAM: I'll start with in general.

9 BY THE WITNESS:

10 A. Yes. If you loaded a map into Maptitude,
11 following your questions, then yes, you would be
12 able to see which blocks are in which districts in
13 Maptitude.

14 Q. And was that the case in 2011? Maptitude's
15 evolved. I just want to make sure we've got the
16 functionality date lined up.

17 A. Maptitude has not changed that ability.
18 You could look at blocks within districts in 2011.

19 Q. And did you do that in 2011 as regards
20 Ohio?

21 MR. SHEEHY: I'm going to object but ask
22 for clarification. Regards to Ohio --

23 MR. FRAM: Congressional district map in
24 Ohio, did you do that?

25 MR. SHEEHY: In regards to the -- sorry,

1 ADAM PERRY KINCAID

2 we've had this issue before. The Ohio congressional
3 map from the legislature or any other draft map
4 that --

5 BY MR. FRAM:

6 Q. Very helpful. Let's just start out with
7 the broadest possible lens and then we'll narrow it
8 on down, which your counsel has suggested would be
9 helpful.

10 So in any way, at any time in 2011 as
11 regards Ohio did you draw maps around different
12 census blocks?

13 A. Yes.

14 Q. Now we'll break it apart. Did you do it
15 for any draft maps?

16 MR. SHEEHY: Objection, ambiguous. What
17 draft maps?

18 BY MR. FRAM:

19 Q. Well, there were -- well, let me ask a
20 question. Do you recall there being maps prior to
21 the final enacted map in Ohio?

22 A. Yes.

23 Q. You remember, in fact, there were two maps
24 that were enacted in Ohio; do you remember that?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. If I use the number HB319 for the first, is
3 that consistent with your recollection?

4 A. I don't remember the actual bill number.

5 Q. Okay. Well, I'll call it -- there's the
6 first one, which I'll state for the record is HB319,
7 and there's a second one, which I'll state for the
8 record was HB369.

9 So do you recall there being drafts for the
10 map that ultimately was enacted as the first map,
11 what I'm calling HB319?

12 A. Draft maps for HB319, yes.

13 Q. And do you remember there being drafts for
14 the second map which I've identified as HB369?

15 A. I don't recall drafts for 369.

16 Q. So just starting with the 319 map, do you
17 recall there being maps -- do you recall drafting
18 any of those -- let me back up. Bad question.

19 Do you recall creating any draft maps for
20 the map that was finally enacted as 319?

21 MR. SHEEHY: Again, just a clarification.
22 Official maps or are we talking about a proposed
23 map?

24 MR. FRAM: Well --

25 MR. SHEEHY: Official legislative drafts or

1 ADAM PERRY KINCAID

2 proposals?

3 BY MR. FRAM:

4 Q. Did you do any -- did you create any
5 drafts -- we can try to get more information about
6 what was made of them in some way. Did you

7 create -- did you do any draft -- did you draft any
8 maps as part of the process of the generation of the
9 319 map in any way?

10 A. Yes.

11 Q. And we'll get around to what use was made
12 of those maps, but do you recall about when you
13 started doing that?

14 MR. SHEEHY: Objection, ambiguous.

15 BY MR. FRAM:

16 Q. When you started drafting -- the "that" in
17 my question meant the drafting of the maps.

18 A. You're talking specifically about Ohio?

19 Q. Yes, please.

20 A. I don't remember when I started working on
21 anything for Ohio specifically.

22 Q. Do you recall -- putting aside the exact
23 start date, I'm not asking that, but do you recall
24 generally were you working on it during the summer
25 of 2011?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: Objection, calls for the
3 witness to speculate.

4 MR. FRAM: Just if you remember.

5 BY THE WITNESS:

6 A. I don't remember when I started working on
7 any draft maps for Ohio.

8 Q. Regardless of when you started, were you
9 working on it in the summer of 2011?

10 A. Yes, I would have been.

11 Q. And were you working on them in September
12 2011?

13 A. Yes.

14 Q. Were you still working on draft maps in
15 Ohio as you moved into the fall, say in October?

16 MR. SHEEHY: I'm just going to object
17 again, just ambiguous on the term "draft map."

18 BY THE WITNESS:

19 A. Are you referring to draft maps for 369 at
20 this point?

21 Q. Well, either one. First of all, I want to
22 ask you whether you did it for anything and then we
23 can break it down as to which one it might have
24 been.

25 A. The reason I'm asking the question is I

1 ADAM PERRY KINCAID

2 don't recall the exact date 319 was passed and I
3 know that the process for 369 began after that. So
4 I don't have any recollection of any draft maps for
5 369. So whatever that date was after 319, I don't
6 have any recollection of any drafts after that
7 point.

8 Q. I think you said you also looked at a hard
9 drive?

10 A. Yes.

11 Q. External hard drive, I think?

12 A. Yes.

13 Q. And was this something that you were able
14 to have files from your work in 2011 exported to?

15 A. Yes.

16 Q. And do you have that -- do you keep that
17 hard drive in your office or do you keep it at home?

18 A. I keep it on my person usually.

19 Q. On your person?

20 A. Uh-huh.

21 Q. And what files, if any, did you find on
22 that hard drive? Again, not going into the content,
23 just the kind of documents.

24 MR. SHEEHY: And just for the record, I'll
25 issue an objection on First Amendment grounds with

1 ADAM PERRY KINCAID

2 the instruction not to reveal the substance of any
3 of those documents, but you may answer the question
4 as to the general subject matter.

5 BY THE WITNESS:

6 A. I do not remember the specific files that I
7 took off of -- that I found on the computer versus
8 the external hard drive, but generally speaking, the
9 files would have related to Ohio congressional
10 districts.

11 Q. Was there any election result data on the
12 files either on the computer or on the hard drive?

13 MR. SHEEHY: I think at that point I'm
14 going to instruct the witness not to answer the
15 question as that's going into the substance of
16 what's in the documents.

17 MR. FRAM: Well, so our record's clear, I'm
18 not asking you about the content, just about the
19 general subject matter, whether they had any
20 election results.

21 MR. SHEEHY: Sorry, Mr. Fram. Would you
22 mind asking the question again.

23 MR. FRAM: Sure. I'm not asking about
24 which elections, I'm not asking about which results.
25 I'm just asking whether or not the general subject

1 ADAM PERRY KINCAID

2 matter concerned election results in any of the
3 files.

4 MR. SHEEHY: I think I'm going to maintain
5 my instruction.

6 MR. FRAM: Okay.

7 BY MR. FRAM:

8 Q. Now, do you recall if any of the files you
9 had either on your hard drive or your computer
10 included any documents or computer information that
11 you received from Clark Benson of Polidata?

12 A. Could you be more specific? You're
13 speaking in regards to the Ohio redistricting or are
14 you talking generally?

15 Q. Just the Ohio redistricting.

16 A. I do not recall having any files from Clark
17 Benson.

18 Q. As regards the Ohio redistricting, did you
19 have any files from Mr. Mark Braden?

20 MR. SHEEHY: You can answer that specific
21 question.

22 BY THE WITNESS:

23 A. No.

24 Q. Shifting over from what you did to look --
25 anything else you did to look for documents I've not

1 ADAM PERRY KINCAID

2 asked you about?

3 A. Those would be the only places I could
4 look. So no.

5 MR. SHEEHY: I'm sorry. Are you going to
6 change subjects to something else?

7 MR. FRAM: I was going to just -- well, not
8 in any profound way. I was going to ask about
9 preparation for the deposition and go on to
10 something else. Do you need --

11 MR. SHEEHY: If you want to go ahead and
12 ask about how he prepared for the deposition that's
13 fine. I just want to consult for a moment on your
14 election results question.

15 MR. FRAM: Okay.

16 MR. SHEEHY: Why don't you go ahead and
17 complete your --

18 MR. FRAM: Six of one, half dozen the
19 other.

20 MR. SHEEHY: Go ahead and complete your
21 examination on how he prepared. That's fine.

22 BY MR. FRAM:

23 Q. Did you do anything to prepare for this
24 deposition?

25 A. I met with my attorneys yesterday.

1 ADAM PERRY KINCAID

2 Q. For about how long?

3 A. Three or four hours.

4 Q. Did you review any documents during the
5 course of that meeting?

6 A. No.

7 Q. Since the time you gathered documents from
8 your computer or your hard drive have you had a
9 chance to look at any documents regarding Ohio 2011
10 redistricting?

11 A. In my possession or in the public sphere?

12 Q. In any way.

13 A. Yes.

14 Q. Okay. And did any of those help you
15 remember something you hadn't remembered before you
16 looked at them?

17 A. No.

18 Q. Do you recall what those documents were?

19 A. Yes.

20 Q. What were they, please?

21 A. I went back and looked at a story on an
22 e-mail exchange that happened during the drafting of
23 the Ohio map.

24 Q. Do you recall the publication, if any, that
25 it was --

1 ADAM PERRY KINCAID

2 A. I don't remember the publication, no.

3 Q. Do you recall what it was about?

4 A. Ohio congressional redistricting.

5 Q. And do you recall was it written before the
6 bills were enacted or at some later date?

7 A. After.

8 Q. Do you recall about when they were written?

9 A. Sometime in 2012.

10 Q. And do you recall what the subject matter
11 was?

12 A. An e-mail exchange between Tom Whatman, Ray
13 DiRossi, Heather Mann, and myself.

14 Q. And what do you recall about the content of
15 that document -- or publication?

16 A. It regarded a change that Mr. Whatman had
17 requested that I facilitate for him.

18 Q. Just so I understand correctly what we're
19 talking about here, was this something published in
20 the press or was this --

21 A. It was written about in the press, yes, and
22 it was also -- I think it might have been the League
23 of Women Voters or some group that had published it
24 publicly in 2012.

25 Q. Was this about the location of the Timken

1 ADAM PERRY KINCAID

2 headquarters?

3 A. Yes.

4 Q. We'll get around to that.

5 MR. FRAM: If you folks need to talk a
6 little bit.

7 MR. SHEEHY: Just give us five minutes,
8 that's fine.

9 (A short break was had.)

10 MR. SHEEHY: Mr. Fram, thank you for the
11 break. We'll go ahead and withdraw our objection on
12 your question concerning the documents that he
13 reviewed and whether or not they had election
14 results. If you want to reask your question.

15 BY MR. FRAM:

16 Q. Did any of the documents you reviewed have
17 election results?

18 A. Yes.

19 Q. And we'll ask the next question, which is
20 which elections?

21 MR. SHEEHY: Go ahead.

22 BY THE WITNESS:

23 A. I think the documents I reviewed had
24 presidential election results, some statewide
25 constitutional office election results, and I

1 ADAM PERRY KINCAID

2 believe that's it from my recollection.

3 Q. Did any of them have what -- let me ask

4 this. Have you ever heard the phrase "index" used

5 in connection with election results?

6 A. Yes.

7 Q. What's your understanding of the word

8 "index"?

9 A. It's become a nebulous term. My definition

10 in this context would be a rating of a performance

11 of some sort of geography, whether it be a precinct

12 or a district or a state.

13 Q. And that could be one election or more than

14 one?

15 A. It's typically a combination of multiple

16 elections.

17 Q. But you could pick one, for example, just

18 the 2008 presidential to pick one out of the blue?

19 A. I wouldn't call that an index.

20 Q. In your use of the term an index is where

21 you're combining more than one election to do a

22 scoring of a district?

23 A. Right.

24 Q. We have a good working term there. Were

25 there any indices in the files you looked at?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. For Ohio in 2011 congressional district,
4 correct?

5 A. Yes.

6 Q. Do you recall what that index was?

7 MR. SHEEHY: Can you rephrase the question?
8 I'm not sure what you mean by what the index was.

9 MR. FRAM: You said you saw some index
10 information. So I'm trying to find out what index,
11 or indices if more than one.

12 MR. SHEEHY: So you're asking what type of
13 index; is that the question?

14 MR. FRAM: I was actually asking -- going
15 straight for a question like he said he saw some
16 index information and I just want to know which
17 index or indices. It could be more than one. I
18 won't put words in your mouth, maybe it was more
19 than one, but that's what I'm trying to find out.

20 MR. SHEEHY: You can answer that precise
21 question.

22 BY THE WITNESS:

23 A. In the documents I reviewed I saw two
24 indices. One was a PVI, which is the Cook political
25 reports, Parson Voting Index, and the other one was

1 ADAM PERRY KINCAID

2 an Ohio-specific index.

3 Q. Let's talk about them one at a time. PVI
4 is a public piece of information, so hopefully
5 there's no privilege around that. As you understand
6 it, what is PVI?

7 A. The PVI is a -- it's a district-specific
8 metric that you'd apply based off of a national
9 result. So you would take the election results from
10 a district, say, Donald Trump got 56 percent in the
11 seat, and you're only looking in the Cook PVI at the
12 two-party vote, you're not looking at the, you know,
13 actual vote. It's just the two parties. They take
14 out everything but Republicans and Democrats and
15 they compare -- technically with the PVI they
16 actually don't look at the Republican vote, they
17 look at the Democrat vote. Say they would look at
18 the Clinton percentage in a district, compare that
19 to the national number, and then they would look
20 back -- if you're doing it, say, today, you would
21 also look at the 2012 elections. So you would look
22 at the Obama vote versus Mitt Romney in a district
23 compared to a national number.

24 Q. Let me see if I understand it right. The
25 national number is the national number for the

1 ADAM PERRY KINCAID

2 candidate in the election you described. So, for
3 example, 2016 for Clinton national number; is that
4 right?

5 A. That's right.

6 Q. And you compare how Clinton did nationally
7 versus how Clinton did in a particular Ohio
8 district; is that right?

9 A. Yes.

10 Q. And if Clinton did, let's say, better in an
11 Ohio district, let's say up around Cleveland than
12 they did nationally, let's say, by a certain number
13 of percentage points, it would be D plus whatever
14 percentage points she did better in that district;
15 is that right?

16 A. Not off of one. PVI uses two different
17 elections.

18 Q. So you take the two elections, okay, and
19 then you average out how the Democrats did
20 nationally; is that what you do?

21 A. Roughly. I can walk you through the
22 formula if you want me to.

23 Q. It's not an average, they do something
24 else?

25 A. They take the two elections, average those

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2 together, positive numbers are D plus, negative
3 numbers are R plus, and then it's a decimal. So you
4 typically multiply by a hundred and that's your
5 actual number.

6 Q. And then they compare that national number
7 to how that candidate did in the district itself; is
8 that right?

9 A. Stepping back, yes.

10 Q. Let's take it a step at a time. They
11 calculate a national number using two elections; is
12 that right?

13 A. That's right.

14 Q. And then they compare that national number
15 to the district number; is that right?

16 A. Yes.

17 Q. And the district number is that also based
18 upon two elections?

19 A. Yes. It would only be -- yes, it's two
20 elections. Technically you compare the 2016
21 election to itself and the 2012 election to itself.

22 Q. Oh, okay. So you're not averaging 2012 and
23 2016. You're comparing 2012 to 2012 for national
24 and district; is that right?

25 A. Let's take a step back. What you would do

1 ADAM PERRY KINCAID

2 is you would take the 2016 results in the district
3 and nationally. So say Hillary Clinton got
4 40 -- well, if you're doing the Cleveland district
5 we'll say 60 percent in some district in Cleveland
6 and got -- what was her national number, 50 point
7 something percent, so we'll say 50 percent, and then
8 in that same district Barack Obama got 75 percent
9 and got 52 percent nationally.

10 Q. Okay.

11 A. So you would take the Clinton numbers, the
12 60 minus the 50, so you have plus 10, and you have
13 the Obama number, which would be 75 minus 52, so you
14 get 23, you add those together you get 33, divide
15 that by 2, and that's your PVI, D plus 16.5.

16 Q. Got it. Thank you so much.

17 A. If it's .50001 then it goes to 14 or 13 and
18 then --

19 Q. There you go. So you had some PVI data
20 either on your computer or on your hard disk; is
21 that right?

22 A. I had just the PVI number, not the
23 calculations.

24 Q. Okay. But you had the PVI numbers for each
25 congressional district; is that right?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. And you had it for the map as enacted?

4 A. Yes.

5 Q. Did you have any PVI numbers for any draft
6 maps?

7 MR. SHEEHY: I'm going to interpose an
8 objection on just vague. Again, just going back to
9 our ambiguity previously, are we talking about
10 official Ohio maps drawn by the legislature or are
11 we talking about a proposed map?

12 BY MR. FRAM:

13 Q. We'll start out with any and then we can
14 talk about official. Did you do any -- other than
15 the final enacted map for which you had PVI
16 information, did you have any draft maps?

17 MR. SHEEHY: Go ahead.

18 BY THE WITNESS:

19 A. I haven't reviewed the document since I --
20 you know, since we found them. So I don't recall
21 having any PVI's for draft maps in my possession --

22 Q. Now, just in terms of the source of the
23 information, can you get this PVI information for
24 each district from Cook or do you get it from
25 somebody else?

1 ADAM PERRY KINCAID

2 A. You can get the final PVI data for a
3 district from the Cook political report. They make
4 that public.

5 Q. What about for draft maps, can you get them
6 from somebody else?

7 MR. SHEEHY: I'm going to pose an objection
8 on the First Amendment. The question's going to
9 identities of anybody in the association. Unless
10 you can answer the question without violating the
11 privilege, I'll instruct you not to answer the
12 question.

13 BY THE WITNESS:

14 A. Could you rephrase the question?

15 Q. Let me ask the question a different way.

16 Have you ever used PVI information for draft maps in
17 any context, not just Ohio?

18 A. Yes.

19 Q. Did you ever do it in any way for Ohio?

20 MR. SHEEHY: So you're asking him if he did
21 the calculations?

22 MR. FRAM: Did you ever look at PVI
23 information in Ohio -- regardless of who did the
24 calculation, have you ever looked at PVI information
25 for draft maps in Ohio in 2011.

1 ADAM PERRY KINCAID

2 MR. SHEEHY: I'm going to object on the
3 grounds of the First Amendment because that's going
4 to what informed his mental impressions and how he
5 communicated internally within the association.

6 BY MR. FRAM:

7 Q. So we have an instruction here from your
8 counsel and the way lawyers sometimes do it -- I'll
9 do it this one time. Are you going to follow your
10 lawyer's instruction not to answer the question?

11 A. Yes.

12 Q. You said there was an Ohio-specific index
13 also?

14 A. Yes.

15 Q. Do you recall what that was?

16 MR. SHEEHY: Let me have a moment to
17 consult with him just to protect the privilege.

18 MR. FRAM: Sure.

19 (A short break was had.)

20 MR. SHEEHY: If you could ask your question
21 again.

22 MR. FRAM: Why don't we go back to the last
23 question before we broke because I have another
24 question in my head which might be better. If you
25 could please read back the last question.

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2 (Record read as requested.)

3 MR. FRAM: That's pretty much the question
4 I'd like to ask.

5 MR. SHEEHY: Can you be more specific do
6 you recall what that was because that might help.

7 MR. FRAM: Do you recall what the index
8 was?

9 MR. SHEEHY: I'm going to maintain a First
10 Amendment objection because that goes to the mental
11 impressions as to what informed him and his internal
12 communications.

13 BY MR. FRAM:

14 Q. Have you ever heard of something called the
15 unified index in Ohio in 2011?

16 A. I don't recall that term.

17 Q. Do you recall an index of five elections,
18 averaging five elections and a two-party vote in
19 Ohio in 2011?

20 MR. SHEEHY: I think the answer one way or
21 another is still going to reveal his mental
22 impressions and what formed his mental impressions
23 within the association and his communications within
24 the association. So I'm going to maintain the First
25 Amendment privilege objection.

1 ADAM PERRY KINCAID

2 MR. FRAM: And you're following your -- he
3 called it an objection, but I think he meant an
4 instruction.

5 MR. SHEEHY: An instruction.

6 BY MR. FRAM:

7 Q. Are you going to follow that instruction?

8 A. Yes.

9 Q. Anything else you can remember about that
10 Ohio index information which you saw in your files?

11 MR. SHEEHY: I'm going to issue the same
12 instruction on the same grounds of the First
13 Amendment privilege.

14 BY MR. FRAM:

15 Q. Do you recall if you provided any of those
16 documents to your counsel that had the Ohio index in
17 them?

18 MR. SHEEHY: You can answer.

19 BY THE WITNESS:

20 A. Yes.

21 Q. Do you know whether or not they were
22 produced in this case or not?

23 MR. SHEEHY: You can answer.

24 BY THE WITNESS:

25 A. I don't believe anything has been produced

1 ADAM PERRY KINCAID

2 in this case.

3 Q. Do you recall how many documents you found
4 that you provided to counsel?

5 A. I don't recall.

6 Q. More than five?

7 MR. SHEEHY: We have his affidavit that was
8 submitted to you that had the document numbers
9 listed.

10 MR. FRAM: Okay. Well, I have it here.
11 Then we know the number?

12 MR. SHEEHY: Yes.

13 MR. FRAM: That's fair enough.

14 BY MR. FRAM:

15 Q. Why don't we change subjects a little bit
16 and talk about your personal background. Your
17 education since high school, if you could please
18 describe that.

19 A. I went to Florida State University for
20 undergrad, got a bachelor's degree, double majored
21 in history and religion, graduated in 2003. Then I
22 earned my master's degree at the University of
23 Georgia where I studied public administration
24 specializing in public policy.

25 Q. Where were you in Georgia, which campus?

1 ADAM PERRY KINCAID

2 A. Athens.

3 Q. Did you work with Professor Hood down
4 there?

5 A. I did.

6 Q. Did you do any work together on any
7 redistricting projects?

8 A. No. I'm sorry. While I was at UGA?

9 Q. While you were there, yeah.

10 A. No.

11 Q. Have you worked with him since?

12 MR. SHEEHY: I'm just going to object as to
13 vague, work with him --

14 MR. FRAM: On redistricting projects.

15 MR. SHEEHY: Thank you. You can answer
16 that question.

17 BY THE WITNESS:

18 A. I've spoken to him about redistricting
19 since.

20 Q. Did you speak with him at all about Ohio
21 redistricting?

22 MR. SHEEHY: There I'm going to object on
23 the grounds of First Amendment privilege as Dr. Hood
24 has been involved in various litigation with the
25 Republican party.

1 ADAM PERRY KINCAID

2 BY THE WITNESS:

3 A. I'm not done with my education if you want
4 me to keep going.

5 Q. I appreciate that.

6 A. I also spent one semester at the College of
7 William and Mary in law school.

8 Q. Did you do any work in computer science in
9 any of your formal education?

10 A. I had one undergraduate course in computer
11 science, and then in my master's program we worked
12 on SPSS, which is a software package on statistics,
13 and received some training on that and also one day
14 in a GIS lab. That would be the extent of my
15 computer science education.

16 Q. When was that GIS lab day?

17 A. It was in a class. I don't remember what
18 the class was and I don't remember what day it was.

19 Q. Do you remember what year it was?

20 A. I was only in Georgia for two years. I
21 don't remember which of the two years I had that
22 course.

23 Q. Did you receive any subsequent training in
24 any GIS software?

25 A. Could you specify what type of training

1 ADAM PERRY KINCAID

2 you're talking about?

3 Q. Did you go to any seminars, lectures,
4 webinars, on-line training, any training whatsoever.

5 A. Let me take those one at a time. I never
6 did any webinars or conferences or seminars to learn
7 how to use GIS software.

8 Q. Did you ever go to any training provided by
9 the Caliper Company?

10 A. I never went to a Caliper training.

11 Q. Did you ever get any training of any kind
12 in Maptitude?

13 A. I taught myself how to use Maptitude.

14 Q. And did you ask anybody any questions while
15 you were training yourself in Maptitude?

16 A. Yes.

17 Q. And who did you ask?

18 A. Dr. Tom Hofeller and Mike Wild.

19 Q. When were you having those conversations
20 about Maptitude?

21 A. I'm sorry?

22 Q. Around when?

23 A. That would be February, March of 2011.

24 Q. Was that your first -- was that when you
25 were learning Maptitude was in February and March

1 ADAM PERRY KINCAID

2 2011?

3 A. Yes.

4 Q. You hadn't worked on it before that?

5 A. No.

6 Q. Have you worked on it since 2011?

7 A. Yes.

8 Q. Have you worked on other redistricting
9 projects since 2011 in which you used Maptitude?

10 A. Yes.

11 Q. How many times?

12 A. I would have to speculate. I have no
13 idea.

14 Q. More than five?

15 MR. SHEEHY: Objection asking the witness
16 to speculate.

17 BY THE WITNESS:

18 A. Yes.

19 Q. I'm not asking for an exact number. I
20 understand that might be speculation. I'm trying to
21 get basic parameters here. More than ten?

22 A. Yes.

23 MR. SHEEHY: Same objection.

24 BY MR. FRAM:

25 Q. More than 20?

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2 MR. SHEEHY: Same objection.

3 BY THE WITNESS:

4 A. Yes.

5 Q. More than 30?

6 MR. SHEEHY: Same objection.

7 BY THE WITNESS:

8 A. Yes.

9 Q. More than 40?

10 MR. SHEEHY: Same objection.

11 BY THE WITNESS:

12 A. Yes.

13 Q. More than 50?

14 MR. SHEEHY: Same objection.

15 BY THE WITNESS:

16 A. Can I ask a little bit more -- since we're
17 getting higher I want to clarify what we're --

18 Q. Sure.

19 A. You're talking about projects. Can you
20 specify what you mean by projects?

21 Q. Well, that's a good clarification or
22 question on your part. You've worked on
23 redistricting in different states since 2011; is
24 that right?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. About how many different states?

3 MR. SHEEHY: I'm just going to pose an
4 objection as to ambiguous on the previous question
5 as to "work" and what you meant by "work."

6 BY MR. FRAM:

7 Q. Let me break it down a little bit. What
8 kinds of work have you done in redistricting since
9 2011?

10 A. What kinds of work? Are you speaking again
11 specifically about projects, redistricting projects,
12 or are you talking globally about redistricting? I
13 mean, they are two different things.

14 Q. What do you mean by "globally"? When you
15 say that what do you mean?

16 A. You asked a question have I worked on
17 redistricting in how many states and what has my
18 work been on redistricting, but you were following
19 up on asking about specific projects. So I'm trying
20 to understand if you're asking about how many states
21 have I done specific projects for or are you asking
22 what work generally have I done on redistricting? I
23 think they're two different --

24 Q. Fair enough. How many states have you done
25 specific redistricting projects on since 2011?

1 ADAM PERRY KINCAID

2 A. Again, I'm going to ask for some
3 clarification on that. When you say "projects," can
4 you define what you would call a project?

5 Q. Since I don't know what you did it's kind
6 of hard for me to do that, isn't it? I guess what
7 I'm asking is what have you done for different
8 states on redistricting since 2011?

9 MR. SHEEHY: I think -- if the question is
10 that broad I think I need to assert the First
11 Amendment privilege because now you're asking about
12 internal workings of the association and what those
13 internal -- what the association was doing.

14 MR. FRAM: I haven't gotten yet to ask what
15 states and what you did. I'm just asking how many
16 states you worked on for redistricting.

17 MR. SHEEHY: So I'll issue the instruction
18 if you can answer the question in the general
19 subject matter without revealing the specific
20 internal communications or internal workings.

21 BY THE WITNESS:

22 A. I cannot honestly answer how many projects
23 I've done on redistricting.

24 Q. Do you recall even how many states you
25 worked on?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: Same instruction.

3 BY THE WITNESS:

4 A. I do not recall.

5 Q. Do you recall whether or not you worked on
6 more than ten states?

7 MR. SHEEHY: I'll object to speculation.
8 You can answer.

9 BY THE WITNESS:

10 A. I think, again, I'm going to ask for some
11 clarification because we still don't know what
12 you're looking for as far as projects. So if you're
13 speaking projects in -- I just need to know what you
14 mean by "projects."

15 Q. Well, that's the thing, you seem to be very
16 focused on the word "project" and that wasn't in my
17 question. I was asking whether or not you did any
18 work in any states on redistricting since 2011? I'm
19 not using the word "project."

20 A. I thought you used "project" in your
21 questions.

22 Q. I did, but I stopped using it because you
23 didn't like it so much. So now I'm trying to ask
24 you just about the work you did without using that
25 word "project." It seems to trip us up a little.

1 ADAM PERRY KINCAID

2 So what work did you do -- in how many states did
3 you do redistricting work since 2011?

4 MR. SHEEHY: That precise question is fine.

5 BY THE WITNESS:

6 A. 50 states.

7 Q. And do you recall which election cycles you
8 did work on since 2011? We've had 2012, 2014, 2016,
9 now 2018. Did you work on -- did you do
10 redistricting work on all those cycles?

11 MR. SHEEHY: Objection, vague, but go
12 ahead.

13 BY THE WITNESS:

14 A. Have I been -- so I can understand your
15 question, redistricting -- when you say
16 redistricting work every cycle you mean on
17 different -- I'm trying to understand what that
18 means.

19 Q. I'm not asking whether you worked on all 50
20 states in every cycle. I mean, if you did you
21 should tell me. Did you work on all 50 states in
22 every cycle?

23 A. No.

24 Q. But you did work on some states in every
25 cycle?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. In the work you did did you actually ever
4 draw maps?

5 MR. SHEEHY: I'm going to issue an
6 objection on First Amendment privilege grounds
7 because now you're getting into the internal
8 workings of the association.

9 MR. FRAM: I think your counsel is
10 instructing you. He said objection, but I think he
11 meant instruction. I don't want to put words in his
12 mouth.

13 MR. SHEEHY: I'm sorry. You're right.
14 Objection to protect the First Amendment privilege.
15 Your question is asking for the internal association
16 workings that Mr. Kincaid did for the association,
17 and I'm going to instruct the witness not to answer
18 that question.

19 BY MR. FRAM:

20 Q. Are you going to follow your counsel's
21 instruction?

22 A. Yes.

23 Q. Let's go back to what you did after you
24 finished your studies at the university. What was
25 your first job after that?

1 ADAM PERRY KINCAID

2 A. My first job after which?

3 Q. You had a bachelor's and you also had a
4 master's, if I recall?

5 A. Right.

6 Q. Did you have a job right after your
7 bachelor's?

8 A. Yes.

9 Q. What was that job?

10 A. I was a staff director for campus ministry
11 in Tallahassee, Florida for one year after
12 graduation. I also had that job while in school.

13 Q. And after that what happened next? Did you
14 have another job after that?

15 A. I was a teaching assistant at the
16 University of Georgia. I received a stipend.

17 Q. And what was your next job after that?

18 A. I went and worked with the Georgia
19 Republican party when I graduated in May of 2006.

20 Q. What did you do there?

21 A. I was the voter programs director.

22 Q. What was your next job after that?

23 A. I was the deputy political director and
24 director of policy and research at the Republican
25 Governors Association.

1 ADAM PERRY KINCAID

2 Q. What were your job responsibilities there?

3 A. Everything from polling analysis to state
4 profiles to election analysis. I did policy
5 research. Since I had a policy degree I figured I'd
6 use that. I did some opposition research, the job
7 included events. It was a lot of different
8 responsibilities.

9 Q. Did you do anything related to
10 redistricting?

11 A. The last year I was at the Republican
12 Governors Association we produced a guide to
13 redistricting for the new governors that we had
14 elected in 2010. None of them had been through a
15 redistricting cycle before and we wanted to give
16 them a one-pager on the process in their states.

17 Q. After working for the Republican Governors
18 Association what did you do next?

19 A. I went and worked with the National
20 Republican Congressional Committee as their
21 redistricting coordinator.

22 Q. And when did you start that job?

23 A. February 2011.

24 Q. And that's here in Washington?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. And the office is over here on 1st

3 Southeast?

4 A. Yes.

5 Q. It's like a four-story building or so,

6 something like that?

7 A. It's a four-story building.

8 Q. Do you recall what floor you were on?

9 A. Second floor.

10 Q. And so Mr. Whatman was on the floor under

11 you, the 1st floor; is that right?

12 A. Yes.

13 Q. The late Dr. Hofeller, did he work in that

14 building?

15 A. Yes.

16 Q. Was he on your floor?

17 A. No.

18 Q. Do you recall what floor he was on?

19 A. The third floor. He might have moved up to

20 the fourth floor later in the cycle. I can't

21 remember when they moved.

22 Q. You mentioned Mr. Wild; do I have that

23 right?

24 A. That's correct.

25 Q. Did he also work in that building?

1 ADAM PERRY KINCAID

2 A. He did.

3 Q. Do you recall which floor he was on?

4 A. Third floor. He would have worked wherever

5 Tom was working.

6 Q. Okay.

7 Do you recall who in that building was
8 working on redistricting in 2011?

9 A. In the entire building?

10 Q. In the four floors, yeah.

11 A. Can you be more specific when you say
12 "working on redistricting"?

13 Q. Were they involved with any particular
14 state redistricting effort?

15 A. I'm going to ask for some more
16 clarification again. When you say "involved in any
17 state redistricting effort," what specifically are
18 you talking about?

19 Q. I don't know what they were doing so I can
20 only start out with a broad question. If you knew
21 someone down the hall or upstairs that were working
22 on redistricting in some state.

23 MR. TORCHINSKY: I think we want to object
24 to relevance on this question. In 2011 was
25 redistricting across the country? Every state in

1 ADAM PERRY KINCAID

2 the country was going through redistricting and
3 every political person who worked at the RNC would
4 have at least seen some news report about
5 redistricting. So I think our objection goes to
6 kind of relevance of the question because it was a
7 nationwide redistricting.

8 MR. FRAM: Just so I understand the
9 resources that were available in the building to
10 work on redistricting, and then we'll follow up with
11 what communications he had with them, if any, about
12 Ohio.

13 MR. TORCHINSKY: Then ask him what
14 resources were available.

15 MR. FRAM: First let me ask the question
16 I'm asking and then I'll ask him the next question.

17 BY MR. FRAM:

18 Q. My first question is who else in the
19 building was working on redistricting in a
20 particular state? Not reading stuff in the
21 newspaper, but just working on redistricting for
22 particular states?

23 MR. SHEEHY: You can answer the question to
24 the extent you know.

25 BY THE WITNESS:

1 ADAM PERRY KINCAID

2 A. As far as staff in the building who had the
3 word "redistricting" in their titles, that would
4 have been Tom Hofeller, Mike Wild, and myself.

5 Q. Did you communicate with anybody else in
6 the building about Ohio redistricting in 2011?

7 A. I'm sorry. I'm going to amend that one.
8 Dale Oldham was also the redistricting counsel at
9 the RNC.

10 Q. Putting aside the question of who had it in
11 their title and didn't have it in their title, do
12 you recall communicating with anybody in 2011 about
13 Ohio redistricting, people who worked in that
14 building?

15 MR. SHEEHY: Objection to the form.

16 BY THE WITNESS:

17 A. Yes.

18 Q. And who?

19 MR. SHEEHY: You can answer.

20 BY THE WITNESS:

21 A. I spoke with a lot of people in my job as
22 the redistricting coordinator in regards to
23 redistricting in Ohio. My job included advising
24 people as well as other things. I would have spoken
25 to every member of senior staff at the NRCC about

1 ADAM PERRY KINCAID

2 redistricting of Ohio in 2011 or 2012.

3 Q. Why don't we start listing their names.

4 Who did you talk to?

5 A. Executive director Guy Harrison; general

6 counsel Jessica First, now Jessica First-Johnston;

7 political director Mike Shields; deputy political

8 director Brock McCleary; likely the communications

9 director Paul Lindsey. Then after that I couldn't

10 tell you specifically who else would have been -- I

11 would have talked to about Ohio redistricting at the

12 NRCC.

13 Q. Guy Harrison, what did you talk with Guy
14 Harrison about?

15 MR. SHEEHY: We're going to object on the
16 grounds of First Amendment privilege, that would
17 reveal internal communications within the
18 association. I'll instruct the witness to not
19 answer the question unless there's a way that you
20 can answer the question in a general -- you know,
21 give the general subject matter, but beyond that no
22 substance -- I'm going to instruct you not to reveal
23 the substance of any communication. I will pose the
24 same instruction for everyone Mr. Kincaid just
25 listed.

1 ADAM PERRY KINCAID

2 MR. FRAM: Can we just assume for the
3 record that I've asked what he talked with each one
4 of them about and you've so instructed?

5 MR. SHEEHY: Yes.

6 BY MR. FRAM:

7 Q. And you're following your counsel's
8 instruction for all of them?

9 A. Yes.

10 MR. SHEEHY: Again, part of that
11 instruction was if you can answer the question in
12 general -- general subject matter that's fine, but
13 if you can't answer the question that way, then I
14 instruct you not to answer.

15 BY MR. FRAM:

16 Q. Can you answer the question as to the
17 general subject matters as to any of those
18 individuals?

19 A. General subject matter would be
20 redistricting.

21 Q. Can you say anything more specific than
22 that?

23 A. I don't believe so.

24 Q. Guy Harrison, did he have an assistant at
25 the time, do you recall, who worked with computers?

1 ADAM PERRY KINCAID

2 A. An assistant who worked with computers?

3 Q. Well, who had a computer, an assistant who
4 had a computer at his or her desk.

5 A. I'm sure he did.

6 Q. Do you recall the name of that person?

7 A. He had two assistants while I was there. I
8 don't remember the name of the first woman who was
9 his assistant. The second one I know was Sarah
10 Binion.

11 Q. Do you recall whether Sarah Binion ever
12 created Excel spreadsheets concerning redistricting
13 in Ohio that you used?

14 MR. SHEEHY: Objection. That's going into
15 the internal workings of the association and I'll
16 instruct the witness not to answer the question on
17 First Amendment privilege grounds.

18 BY MR. FRAM:

19 Q. The same question regarding the other
20 unnamed assistant or Mr. Harrison, do you know
21 whether or not they ever generated spreadsheets that
22 you used in redistricting work in Ohio in 2011?

23 MR. SHEEHY: Same objection, same
24 instruction.

25 THE REPORTER: Can we take a quick break?

1 ADAM PERRY KINCAID

2 MR. FRAM: Sure. Let's take a little
3 break.

4 (A short break was had.)

5 BY MR. FRAM:

6 Q. In 2011 you were the redistricting
7 coordinator for the National Republican
8 Congressional Committee; is that right?

9 A. Yes.

10 Q. Were there people who reported to you?

11 A. No.

12 Q. Did you have a team that you worked with?

13 A. A team that I worked with -- can you be
14 more specific about what you mean?

15 Q. I don't know. I don't know how you were
16 organized. That's why I'm asking.

17 A. I did not have other staff working with me
18 on redistricting.

19 Q. How long did you hold that job?

20 A. That title I had for about a year and a
21 half.

22 Q. Did you take another title at the NRCC?

23 A. Yes.

24 Q. What was that title?

25 A. I became a southeast regional political

1 ADAM PERRY KINCAID

2 director.

3 Q. And how long did you have that job?

4 A. I don't recall.

5 Q. But during the whole time the Ohio
6 redistricting was going on in 2011 you held the
7 title as the redistricting coordinator for the NRCC;
8 is that right?

9 A. That's correct.

10 Q. Then after -- how long were you at the NRCC
11 in your next job?

12 A. I was there -- I started at the RNC in
13 April 2013. So I left the NRCC to go to the RNC at
14 that point.

15 Q. RNC, okay. And are you still at the RNC?

16 A. No.

17 Q. How long were you at the RNC?

18 A. Until November of 2017.

19 Q. And then what did you do?

20 A. I became the executive director of the
21 National Republican Redistricting Trust.

22 Q. Is that independent from the RNC?

23 A. Yes.

24 Q. Back in 2011 -- we mentioned Tom Whatman
25 down there on the first floor of the building. So

1 ADAM PERRY KINCAID

2 you knew Tom Whatman back in 2011?

3 A. Yes.

4 Q. When's the first time you met Tom Whatman?

5 A. Sometime in the summer of 2011.

6 Q. In the summer of 2011, not before?

7 A. Yes.

8 Q. Do you recall how long he'd been in the
9 building before the summer?

10 A. No.

11 Q. Do you recall the circumstances under which
12 you met?

13 A. No.

14 Q. Do you recall why you met?

15 MR. SHEEHY: Objection on First Amendment
16 privilege grounds. I will instruct the witness to
17 not answer the question unless there's a way you can
18 answer the question without revealing the internal
19 communications of the association.

20 BY THE WITNESS:

21 A. Can you repeat the question?

22 Q. Do you recall why you met Tom Whatman in
23 the summer of 2011?

24 A. I do not recall why I first met Tom Whatman
25 in 2011.

1 ADAM PERRY KINCAID

2 Q. Did you have conversations with Tom Whatman
3 in 2011 about Ohio redistricting?

4 A. Yes.

5 Q. Do you recall the content of any of those
6 conversations?

7 MR. SHEEHY: I'll issue a cautionary
8 instruction. I think you can answer the precise
9 question asked and we'll take it from there. Do not
10 reveal any substance of the communications under the
11 First Amendment privilege.

12 BY THE WITNESS:

13 A. Do I remember the --

14 Q. Content of any of your communications with
15 Tom Whatman in 2011 regarding Ohio redistricting.

16 A. Yes.

17 Q. What do you recall about the content of
18 those communications?

19 MR. SHEEHY: With that I will issue the
20 instruction on the First Amendment privilege to not
21 reveal any of the internal communications within the
22 association.

23 BY MR. FRAM:

24 Q. Do you recall -- by the way, so we're clear
25 about communications, I'm including voice-to-voice

1 ADAM PERRY KINCAID

2 communications, in-person communications, or e-mail
3 communications. Do you understand?

4 A. Yes.

5 Q. And I'm asking whether you recall the
6 content of any of those communications as I've
7 broadly defined them?

8 MR. SHEEHY: Same instruction.

9 BY THE WITNESS:

10 A. Yes.

11 Q. And can you tell me about the content of
12 any of those communications?

13 MR. SHEEHY: Same instruction to not reveal
14 any of the substance of the internal communications
15 of the association.

16 BY MR. FRAM:

17 Q. Was Mr. Whatman a member of the NRCC in
18 2011?

19 MR. SHEEHY: Objection, lack of foundation.

20 BY MR. FRAM:

21 Q. Well, do you recall what organization
22 Mr. Whatman was working for in 2011?

23 A. Yes.

24 Q. What was that?

25 A. He worked with Team Boehner.

1 ADAM PERRY KINCAID

2 Q. And do you know did Team Boehner -- what
3 Team Boehner's relationship was with the NRCC?

4 A. I don't know the nature of their
5 relationship.

6 Q. Was Mr. Whatman an employee of the NRCC?

7 MR. SHEEHY: Objection, lack of foundation.

8 BY MR. FRAM:

9 Q. Were there employees of the NRCC?

10 A. Yes.

11 Q. Were you an employee of the NRCC?

12 A. Yes.

13 Q. Was Mr. Whatman an employee of the NRCC?

14 MR. SHEEHY: Objection, lack of foundation.

15 MR. FRAM: If you know.

16 MR. SHEEHY: You may answer.

17 BY THE WITNESS:

18 A. I don't know.

19 Q. Do you know who paid Mr. Whatman in 2011?

20 A. I don't know.

21 Q. When you were talking with Mr. -- when you
22 were communicating with Mr. Whatman about
23 redistricting in Ohio in 2011 was it your
24 understanding you were communicating with someone
25 who was a member of the NRCC?

1 ADAM PERRY KINCAID

2 A. Can you clarify "member"?

3 Q. Well, your counsel has instructed several
4 times about communications among the association.

5 Were there members of the association?

6 A. Yes.

7 Q. Was he one of them?

8 A. Again, I think there's some -- you need to
9 clarify. Are you talking about the association -- I
10 think we need some clarification on the association
11 broadly versus the association meaning the NRCC.

12 MR. SHEEHY: And I'll just pose the
13 objection asking for a legal conclusion.

14 BY MR. FRAM:

15 Q. Do you have an understanding what the
16 association is broadly beyond the NRCC itself?

17 A. Yes.

18 Q. What is that?

19 A. The association broadly being Republicans.

20 MR. FRAM: Counsel, so our record's clear
21 in terms of communication, you've instructed many
22 times now about communications among the association
23 and I don't want to have an unclear record. Are you
24 talking about communications among Republicans?

25 MR. SHEEHY: I would refer you, Mr. Fram,

1 ADAM PERRY KINCAID
2 to the affidavit that Mr. Kincaid has submitted as
3 well as the affidavit that Mr. Winkleman has
4 submitted. Mr. Winkleman in his affidavit defines
5 the association as including Team Boehner,
6 communications with Mr. Whatman within the NRCC, as
7 well as -- Mr. Winkleman's affidavit defines the
8 parameters of the association.

9 MR. FRAM: Thank you. I just wanted that
10 clear on the record.

11 MR. TORCHINSKY: Let me also include in
12 that John Boehner at the time was the Speaker of the
13 House and a member of the NRCC by virtue of being a
14 Republican elected member of Congress.

15 MR. SHEEHY: And that is spelled out in
16 Mr. Winkleman's affidavit.

17 BY MR. FRAM:

18 Q. Do you have any understanding as to why
19 Mr. Whatman was working on redistricting in Ohio in
20 2011?

21 MR. SHEEHY: You can answer the precise
22 question asked.

23 BY THE WITNESS:

24 A. Yes.

25 Q. And why? Why was he working on it?

1 ADAM PERRY KINCAID

2 A. My understanding was that he was designated
3 as the point person for liaising with the Ohio
4 legislature on behalf of Team Boehner.

5 Q. Let's go back to the work you were doing
6 regarding Ohio redistricting in 2011.

7 A. Okay.

8 Q. We'll break it down in terms of specific
9 tasks in a little bit, but just to set the table,
10 what kinds of work were you doing?

11 MR. SHEEHY: I'm going to instruct the
12 witness on the grounds of the First Amendment
13 privilege not to reveal the substance of the work
14 that you were doing that would reveal the internal
15 workings of the association. You may answer the
16 question if you can on the general subject matter.
17 BY THE WITNESS:

18 A. I think I'll refer back to my affidavit
19 where I talked about informing members of Congress
20 on the contours of their districts. I don't have it
21 in front of me so I don't have the specific
22 language, but I would refer you to that explanation
23 of what I was doing at the NRCC.

24 Q. Did you draw any maps?

25 MR. SHEEHY: Objection, vague as to what

1 ADAM PERRY KINCAID

2 maps.

3 MR. FRAM: Any congressional district maps.

4 MR. SHEEHY: Still vague, objection.

5 MR. FRAM: You can answer if there's been
6 no instruction.

7 MR. SHEEHY: Objection as to what
8 congressional maps, that's the vagueness objection.

9 MR. FRAM: Did you draw any congressional
10 district maps in Ohio in 2011?

11 MR. SHEEHY: You can answer.

12 BY THE WITNESS:

13 A. Yes.

14 (Kincaid Exhibit 1 was marked
15 as requested.)

16 BY MR. FRAM:

17 Q. Why don't we have marked as our first
18 exhibit here a document you referred to a few times,
19 which is your affidavit. It's entitled "Affidavit
20 of Nonparty Adam Kincaid in Support of his Assertion
21 of First Amendment Privilege" filed in the United
22 States District Court for the Southern District of
23 Ohio and appears to have been signed on
24 September 28, 2018.

25 I'll start with that last page. Is that

1 ADAM PERRY KINCAID

2 your signature?

3 A. Yes, it is.

4 MR. SHEEHY: Can we give the witness a
5 moment to sort of review it before you ask your
6 questions.

7 BY MR. FRAM:

8 Q. Well, When's the last time you read this?

9 A. September 28, 2018.

10 Q. Take another look at it. Take your time.
11 I'm only going to ask about one paragraph, paragraph
12 13 on page 3.

13 (Witness reviewing document.)

14 BY MR. FRAM:

15 Q. Do you see that paragraph there?

16 A. Yes.

17 Q. When you say "As part of my normal duties
18 as redistricting coordinator I conducted, among
19 other things, analyses of draft redistricting maps
20 and final redistricting maps"; do you see that?

21 A. Yes.

22 Q. And that included Ohio congressional
23 district maps in 2011, correct?

24 A. Yes.

25 Q. It says here you conducted analyses of

1 ADAM PERRY KINCAID

2 draft redistricting maps. What analyses did you
3 conduct?

4 MR. SHEEHY: Objection on the grounds of
5 the First Amendment privilege. I instruct the
6 witness not to answer the question unless you can
7 answer it in a general subject matter way and not
8 reveal the internal workings of the association.

9 BY THE WITNESS:

10 A. I think I would refer back to my affidavit,
11 then, in the other section where I've defined it.
12 Since we have it in front of us we might as well
13 look at it. I wish I had the control F function so
14 I could find in here what I'm looking for.

15 There it is. Paragraph 12 above, the
16 analyses would have included beneficial assistance
17 to members regarding the contours of their
18 districts.

19 Q. What did you tell members about the
20 contours of their districts?

21 MR. SHEEHY: Objection. I instruct the
22 witness not to answer the question or reveal the
23 substance of any communications within the
24 association.

25 BY MR. FRAM:

1 ADAM PERRY KINCAID

2 Q. Are you going to follow that instruction?

3 A. Yes.

4 MR. SHEEHY: You asked him earlier about
5 the association. Mr. Winkleman's affidavit pointed
6 out the congressional members are members of the
7 NRCC and therefore part of the association.

8 BY MR. FRAM:

9 Q. I'm not asking about the content now. I'm
10 just asking how you communicated with them. Did you
11 send them spreadsheets?

12 MR. SHEEHY: That's still the content,
13 you're getting into the content. So same
14 instruction.

15 BY MR. FRAM:

16 Q. Did you -- and you're going to follow that
17 instruction?

18 A. Yes.

19 Q. Did you have phone calls with them?

20 A. "With them," are you referring to the
21 members of Congress?

22 Q. Yes, please.

23 A. In Ohio?

24 Q. Yes.

25 A. No.

1 ADAM PERRY KINCAID

2 Q. You said you provided analyses in paragraph
3 13 and you say you did that so that the members
4 would know the contours of their districts?

5 A. Right.

6 Q. So my question is how did you communicate
7 that information? I'm not asking what you
8 communicated but how did you communicate it?

9 A. With the members, in person.

10 Q. Did you ever communicate with them in
11 writing in any way?

12 A. Yes.

13 Q. What kind of writing? Don't give me the
14 content. What kind of writing did you give them?

15 A. Again, I would refer back to analyses of
16 draft maps and final maps.

17 Q. And those analyses of the maps would that
18 include an actual map?

19 MR. SHEEHY: You're getting into the
20 content of the communications. Same instruction on
21 the grounds of First Amendment privilege.

22 BY MR. FRAM:

23 Q. I understand your counsel has instructed
24 you not to disclose whether you provided
25 spreadsheets or maps. Did you provide any

1 ADAM PERRY KINCAID

2 memoranda?

3 A. I do not recall drafting any memos for
4 members of Congress.

5 Q. How about e-mails?

6 A. I do not recall sending e-mails to any
7 members of Congress.

8 Q. How about to any of their staff?

9 A. Yes.

10 Q. So you did provide e-mails to members of --
11 to staff members for members of Congress; is that
12 right?

13 A. Yes.

14 Q. And does that include Mr. Whatman?

15 A. Yes.

16 Q. Did you provide any memoranda to
17 Mr. Whatman?

18 A. Could you define "memoranda"?

19 Q. Well, a piece of paper that's got some
20 words on it, let's start with that.

21 A. Yes.

22 Q. Okay. And I'll take -- you've already said
23 you gave them e-mails. Now you gave them some other
24 documents with words on it to Mr. Whatman?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. And that concerned Ohio redistricting in
3 2011?

4 A. Yes.

5 Q. Do you recall any of those words?

6 MR. SHEEHY: Objection, same instruction on
7 the First Amendment privilege not to reveal the
8 content of communications, the internal
9 communications of the association.

10 BY MR. FRAM:

11 Q. Did you ever provide -- do you know what a
12 block equivalency file is?

13 A. It's another word for block assignment
14 file, yes.

15 Q. Did you ever provide any of those to
16 Mr. Whatman?

17 MR. SHEEHY: Objection, this is going to
18 the communications of the association, same
19 instruction on the grounds of the First Amendment
20 privilege.

21 BY MR. FRAM:

22 Q. Did you ever use the phrase "shape file"?

23 A. Yes.

24 Q. What's a shape file?

25 A. A shape file is a -- it's a polygon layered

1 ADAM PERRY KINCAID

2 within -- typically used with Esri software, but can
3 also be used within Maptitude or other GIS software.

4 Q. Did you ever work with any shape files as
5 regards Ohio redistricting in 2011?

6 A. I don't recall working with shape files in
7 Ohio. I'm sorry. Let me clarify that. When an
8 Ohio map would have been finalized I would have
9 exported a shape file from Maptitude for the
10 archives of the NRCC, but I would not have worked
11 with a shape file at any point before that.

12 Q. Did you ever export data in Excel form from
13 Maptitude?

14 A. Ever?

15 Q. Ever.

16 A. Yes.

17 Q. Did you ever do it in Ohio in 2011?

18 A. Yes.

19 Q. Do you recall the contents of any of those
20 Excel sheets?

21 MR. SHEEHY: You can answer the precise
22 question.

23 BY THE WITNESS:

24 A. Yes.

25 Q. Did it include election results in that

1 ADAM PERRY KINCAID

2 information?

3 MR. SHEEHY: I'm going to pose the First
4 Amendment privilege objection and instruct the
5 witness not to answer the question as it goes to the
6 substance of communications within the association.

7 BY MR. FRAM:

8 Q. Are you going to follow that instruction?

9 A. Yes, sir.

10 Q. Did it include any PVI information?

11 MR. SHEEHY: Same objection, same
12 instruction.

13 BY MR. FRAM:

14 Q. Did it include any index information?

15 MR. SHEEHY: Same objection, same
16 instruction.

17 BY MR. FRAM:

18 Q. Have you ever met a person named John

19 Moore?

20 A. Yes.

21 Q. Have you ever worked with him on
22 redistricting projects, that project word?

23 A. Yes.

24 Q. Did you work with him at all concerning
25 redistricting in Ohio in 2011?

1 ADAM PERRY KINCAID

2 A. No.

3 Q. Have you ever met someone called Mark
4 Braden?

5 A. Yes.

6 Q. Did you ever do any work with him regarding
7 redistricting in Ohio in 2011?

8 MR. SHEEHY: I'm going to pose an
9 objection. I think you can answer the precise
10 question asked.

11 BY THE WITNESS:

12 A. Could you clarify what you mean by "work
13 with"?

14 Q. Did you ever talk to him?

15 A. I never spoke with Mark Braden about
16 redistricting in Ohio in 2011.

17 Q. How about e-mail, did you ever e-mail each
18 other about it?

19 A. Yes.

20 Q. Did you ever attend any meetings where he
21 was present where the subject was redistricting in
22 Ohio in 2011?

23 A. I don't recall being in any meetings with
24 Mark Braden.

25 Q. Did you ever share any maps with him in

1 ADAM PERRY KINCAID

2 2011 about Ohio redistricting?

3 MR. SHEEHY: I'm going to object on the
4 grounds of the First Amendment privilege and
5 instruct the witness not to answer the question as
6 it would refer to communications within the
7 association.

8 MR. FRAM: This may be covered by one of
9 your instructions. I apologize in advance if this
10 is asked and answered.

11 MR. SHEEHY: I forgive in advance.

12 BY MR. FRAM:

13 Q. Can you tell me about the contents of those
14 e-mails?

15 MR. SHEEHY: Objection, same instruction on
16 the grounds of the associational privilege under the
17 First Amendment.

18 BY MR. FRAM:

19 Q. Dr. Hofeller, the late Dr. Hofeller --

20 A. That's right.

21 Q. -- did you communicate with him about
22 redistricting in Ohio in 2011?

23 A. Yes.

24 Q. What do you recall about those
25 conversations -- those communications?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: I'll issue an instruction to
3 not reveal the substance of the communications on
4 the grounds of the associational privilege under the
5 First Amendment. If you can answer the question as
6 to the general subject matter, you may.

7 BY THE WITNESS:

8 A. We would talk about redistricting generally
9 and sometimes -- I asked Tom a lot of questions
10 about how to talk to members of Congress about
11 redistricting. That was a lot of what I talked to
12 Tom about in Ohio, more style than substance.

13 Q. What style questions do you recall being
14 pertinent to redistricting in Ohio in 2011?

15 MR. SHEEHY: Same objection and same
16 instruction. If you can answer just in general
17 subject matter without revealing the internal
18 communications of the association.

19 BY THE WITNESS:

20 A. I would request advice from Tom on how to
21 best communicate information to members of Congress
22 when meeting with them about the contours of their
23 districts, how to approach those sorts of meetings
24 and how to brief them both effectively and also -- I
25 know this will sound odd, but in a empathetic/

1 ADAM PERRY KINCAID

2 sympathetic way and not -- Tom was very good at
3 that. He was good at communicating that kind of
4 information.

5 Q. Any particular conversations with any
6 particular members of Congress that you recall being
7 the subject of your conversation with Dr. Hofeller?

8 MR. SHEEHY: Same objection and
9 instruction. I think given the question asks for
10 particular, the instruction is not to answer the
11 question.

12 BY MR. FRAM:

13 Q. Did you communicate with any members of the
14 RNC about redistricting in Ohio in 2011?

15 A. This is a semantic clarification. Are you
16 asking about the members of the RNC as a technical
17 term are the 168 members of the Republican National
18 Committee? Is that what are you referring to? Are
19 you referring to employees?

20 Q. That's a very good request for
21 clarification. Thank you. Let's start with the
22 actual members themselves and then we'll get to
23 their staff second. Did you talk to any of the
24 actual members of the RNC about Ohio redistricting
25 in 2011?

1 ADAM PERRY KINCAID

2 A. I do not recall talking to any of the
3 members of the RNC.

4 Q. Do you recall talking to any of their
5 staff?

6 A. Yes.

7 Q. Who, please?

8 A. Tom Hofeller and Mike Wild and Dale Oldham.

9 Q. What do you recall about the conversations
10 with Mr. Wild?

11 MR. SHEEHY: Objection on the grounds of
12 the First Amendment privilege revealing internal
13 associational communications, and I instruct you to
14 not to reveal the substance of those communications.
15 If you can answer the question with general subject
16 matter, you may.

17 BY THE WITNESS:

18 A. I would have spoken to Mike Wild about
19 technical issues, things about how to use Maptitude
20 software.

21 Q. What about how to use Maptitude software,
22 what were those communications?

23 MR. SHEEHY: Objection to the specific
24 question. So I'm going to instruct the witness not
25 to answer the question on the grounds of the First

1 ADAM PERRY KINCAID

2 Amendment privilege.

3 BY MR. FRAM:

4 Q. Is there anything you can tell me about the
5 general conversations -- general topic of the
6 conversations with Mr. Wild about Maptitude?

7 A. Mr. Wild was an expert in Maptitude. He
8 knew how to do things in it that nobody else really
9 knew outside of Caliper it seemed. So sometimes
10 when I needed help trying to figure out how to
11 export or import something or run a report within
12 Maptitude I would ask Mike for help how to do that.

13 Q. Did you ever ask him for help on how to
14 export an Excel file?

15 A. No. I could figure that out on my own.

16 Q. And did you?

17 MR. SHEEHY: Objection on First Amendment
18 privilege grounds and the internal workings of the
19 association.

20 BY MR. FRAM:

21 Q. Did you ever export an Excel file
22 regarding -- strike that. Let me start over.

23 In 2011 did you ever export an Excel file
24 regarding congressional districting in Ohio?

25 MR. SHEEHY: Same objection, same

1 ADAM PERRY KINCAID

2 instruction on the First Amendment privilege.

3 MR. FRAM: To make this go further along
4 maybe we could just have a standing -- for this
5 deposition understanding that when you instruct the
6 witness he's following your instruction so I don't
7 have to keep asking if he's following the
8 instruction. Is that acceptable?

9 MR. SHEEHY: That's acceptable to me.

10 BY MR. FRAM:

11 Q. Of course, if you don't want to follow the
12 instruction let us know, but then you better take it
13 outside with him.

14 A. I'll be following my attorney's
15 instructions.

16 Q. Okay.

17 Any other staff members of the RNC?

18 A. I'm sorry. That I spoke with about the
19 Ohio redistricting in 2011?

20 Q. Correct.

21 A. I can't remember who all was on staff at
22 the RNC in 2011, to be honest with you.

23 Q. Okay.

24 A. So I couldn't tell you specific staff at
25 the RNC I would have spoken with about

1 ADAM PERRY KINCAID

2 redistricting.

3 Q. Did I ask you what you recall about those
4 conversations? I may have missed that one.

5 A. You haven't asked that question.

6 Q. Let me ask it, then. What do you recall
7 about your conversations with Mr. Oldham?

8 MR. SHEEHY: I'll issue the same
9 instruction on the grounds of the First Amendment
10 privilege. Do not reveal the communication -- the
11 internal communications within the association. You
12 may answer the question if you can in a general
13 matter about the subject matter of the
14 communications. I'd also remind that you Mr. Oldham
15 was redistricting counsel at the RNC and do not
16 reveal any attorney-client communications as well.
17 BY THE WITNESS:

18 A. I didn't talk to Dale a lot in 2011. He
19 typically worked with Tom and was running around the
20 country being Dale. So as far as specific
21 conversations I had with Dale, I don't recall what
22 those conversations would have been about.

23 Q. Are you familiar with an organization
24 called the RLSC?

25 A. I don't know an organization call the RLSC.

1 ADAM PERRY KINCAID

2 Q. I'm sorry. The RSLC. I apologize.

3 A. Yes.

4 Q. What's that?

5 A. The RSLC is the Republican State Leadership
6 Committee.

7 Q. And did you talk to anybody at that
8 organization about redistricting in Ohio in 2011?

9 A. I don't recall talking to anyone at the
10 RSLC about redistricting in Ohio in 2011.

11 Q. Did you ever talk to any Ohio state
12 political representatives about redistricting in
13 Ohio in 2011? Let me be very clear. When I say
14 redistricting here I'm talking about congressional
15 redistricting.

16 A. When you say "state political
17 representatives" I can tell you're trying to be
18 precise, but I'm not quite sure what the means.

19 Q. Any members of the Ohio General Assembly
20 whether House or Senate.

21 A. I didn't speak to any members of the Ohio
22 General Assembly or Senate.

23 Q. Did you ever communicate with -- let me
24 back up.

25 A. To my recollection.

1 ADAM PERRY KINCAID

2 Q. Did you ever know someone named Bob Bennett
3 in Ohio?

4 A. I did meet Bob Bennett a few times.

5 Q. Did you ever communicate with him about
6 congressional redistricting in Ohio in 2011?

7 A. Only after the fact.

8 Q. What do you recall about that conversation?

9 MR. SHEEHY: Objection on the First
10 Amendment privilege grounds. I instruct the witness
11 to not answer the question if it reveals the
12 internal associational communications of the
13 association. If you can answer the question in just
14 the general subject matter, that's fine.

15 BY THE WITNESS:

16 A. I met Mr. Bennett at an event in 2012, I
17 believe. I can't remember who put the event on, but
18 I just remember meeting him and talking with him.

19 Q. What do you recall about the conversation?

20 MR. SHEEHY: Same objection, same
21 instruction.

22 BY MR. FRAM:

23 Q. Did you ever -- did you ever meet someone
24 named Ray DiRossi? Let me back up. Did you ever
25 communicate with someone named Ray DiRossi?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. In 2011 regarding redistricting in Ohio?

4 A. Yes.

5 Q. What do you recall about those
6 communications?

7 A. Only what I've seen in the press. We had
8 an e-mail exchange toward the end of the process of
9 drafting the initially passed map in Ohio. Apart
10 from that I don't have any other recollections of
11 any conversations with Mr. DiRossi.

12 Q. Did you ever communicate with Heather Mann
13 now Heather Blessing?

14 A. I didn't know that. I would say the same
15 thing, the exact same answer for Heather Mann. I
16 have no recollection apart from what I've seen in
17 the e-mail chain which was made public about
18 communicating with her on Ohio redistricting.

19 Q. And that e-mail chain concerned the
20 relocation of the Timken headquarters; is that
21 right?

22 A. It was regarding the Timken headquarters,
23 yes.

24 Q. I don't mean relocation. That's a bad
25 question. The district in which the Timken

1 ADAM PERRY KINCAID

2 headquarters would be located.

3 A. Yes, sir.

4 Q. I'll ask you a few more names if they ring
5 a bell. In connection with Ohio redistricting in
6 2011, I'll keep my questions narrow there, John
7 Barron?

8 A. John Barron? I don't recall that name.

9 Q. Mike Lenzo?

10 A. I recall the name, but I don't remember
11 talking to him about redistricting in Ohio in 2011.

12 Q. Matt Schuler?

13 A. I don't remember that name.

14 Q. Troy Judy?

15 A. Same answer as Mr. Lenzo, I recall the name
16 but I don't remember talking to that person about
17 redistricting in Ohio in 2011.

18 Q. Beth Hansen?

19 A. That name sounds familiar. I know I've
20 talked to that person before I believe, but I don't
21 recall the content of that conversation or whether
22 it pertained to Ohio redistricting in 2011 or not.

23 Q. Now, you mentioned some members of Congress
24 before as a general group?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. I want to ask you about individual names
3 and see if you recollect you had a communication
4 with them or not. Then I'll ask you about the
5 specific content. Then we'll have an instruction
6 and we'll have a nice record.

7 A. Okay.

8 Q. Jim Jordan?

9 A. I did not meet with Jim Jordan.

10 Q. Did you communicate with him in any way?

11 A. Not to my recollection.

12 Q. Jim Renacci?

13 A. Yes.

14 Q. How did you communicate with him?

15 A. I met with him in person.

16 Q. What do you recall about that meeting?

17 MR. SHEEHY: I'm going to instruct the
18 witness to not reveal the substance of the
19 communications as those go to the internal
20 association under the First Amendment privilege.
21 However, if you can answer the question in a general
22 manner just giving the subject matter, then go
23 ahead.

24 BY THE WITNESS:

25 A. And I'll refer you to paragraph 12 of my

1 ADAM PERRY KINCAID

2 affidavit where I would have assisted in providing
3 him with the contours of his district.

4 Q. What do you recall that you talked to him
5 about regarding the contours of his district?

6 MR. SHEEHY: Same objection on the grounds
7 of the First Amendment privilege, and I think
8 because it's a more specific question I'm going to
9 instruct the witness not to answer the question.

10 by MR. FRAM:

11 Q. What about Steve Austria?

12 A. Yes.

13 Q. Was that an in-person meeting or on the
14 phone or by e-mail?

15 A. In person.

16 Q. Where was that?

17 A. NRCC.

18 Q. And did you meet with him more than once?

19 A. I don't recall.

20 Q. Do you recall around when you met with him?

21 A. Likely -- not specifically, no.

22 Q. What do you recall about the conversation?

23 MR. SHEEHY: I'm going to instruct the
24 witness not to answer the question or provide the
25 substance of those communications on the grounds of

1 ADAM PERRY KINCAID

2 the First Amendment privilege as answering the
3 question would reveal internal associational
4 communications. If you can answer the question by
5 giving general subject matter, you may.

6 BY THE WITNESS:

7 A. I would have met with Mr. Austria to go
8 over the contours of the district that he would have
9 been drawn into.

10 Q. And what about those contours do you recall
11 discussing with Mr. Austria?

12 MR. SHEEHY: Same objection and same
13 instruction. It's a more specific question. So
14 I'll instruct you to not answer the question.

15 BY MR. FRAM:

16 Q. What about Mr. Mike Turner, did you
17 communicate with him?

18 A. Yes.

19 Q. In person or --

20 A. In person.

21 Q. And here in Washington?

22 A. Yes.

23 Q. Do you recall about when you met with him?

24 A. It would have been around the same time,
25 late summer, early fall. August-ish, how about

1 ADAM PERRY KINCAID

2 that.

3 Q. Did these communications with Mr. Turner
4 and Austria in any way concern the fact that they
5 might be paired with each other in the new map?

6 MR. SHEEHY: I'm going to instruct the
7 witness to not reveal the substance of those
8 communications as they go to the internal
9 association protected under the First Amendment. If
10 you can reveal the general subject matter of those
11 communications, you may.

12 BY THE WITNESS:

13 A. My conversations with Mr. Turner and
14 Mr. Austria would have included the contours of
15 their districts. I think I'll leave it at what the
16 affidavit says.

17 Q. What about Mr. Steve Stivers?

18 A. Yes.

19 Q. Did you meet with him?

20 A. Yes.

21 Q. What do you recall about that conversation?

22 MR. SHEEHY: Same objection and instruction
23 under the First Amendment associational privilege.
24 Again, you can reveal -- if you can answer the
25 question you can provide the general subject matter

1 ADAM PERRY KINCAID

2 of the communication, but not the substance of the
3 communication.

4 BY THE WITNESS:

5 A. I'll refer you back to paragraph 12 of the
6 affidavit.

7 Q. That just says you talked about the
8 contours of his district, right?

9 A. That's right.

10 Q. That's what you mean when you refer me to
11 the paragraph?

12 A. Yes, sir.

13 Q. And now I'm asking you what about the
14 contours?

15 MR. SHEEHY: Same objection and
16 instruction.

17 BY MR. FRAM:

18 Q. What about Steve Chabot, C-H-A-B-O-T?

19 A. Yes.

20 Q. Did you meet with him in person?

21 A. Yes.

22 Q. Here in Washington?

23 A. Yes, sir.

24 Q. And more than once about the redistricting
25 in 2011?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. Do you recall around when?

4 A. Around the same timeline, probably August.

5 Q. Do you recall why you met with him more
6 than once?

7 A. Yes.

8 Q. Why?

9 MR. SHEEHY: I'm going to instruct the
10 witness to not answer the question if answering the
11 question would reveal the substance, the inner
12 workings of the association on the grounds of the
13 First Amendment privilege.

14 BY MR. FRAM:

15 Q. Did you ever talk to Mr. Chabot about
16 inclusion of Warren County in his district?

17 MR. SHEEHY: Objection on the grounds of
18 the First Amendment privilege and instruct the
19 witness not to answer the question as that would
20 reveal internal communications within the
21 association.

22 BY MR. FRAM:

23 Q. What about Mr. Bob Gibbs?

24 A. Yes.

25 Q. Did you meet with him in person?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. Also here in Washington?

4 A. Yes.

5 Q. Also in August 2011?

6 A. Again, I don't want to say August. Between
7 probably late summer, early fall, around August.

8 Q. Fair enough. What do you recall about that
9 conversation?

10 MR. SHEEHY: Objection on the grounds of
11 the First Amendment privilege and instruct the
12 witness not to reveal the substance of the
13 communication within the association. If you can
14 answer with general subject matter, you may.

15 BY THE WITNESS:

16 A. My meeting with Mr. Gibbs would have
17 covered the contours of his district.

18 Q. Can you tell me anything about what you
19 said about the contours of his district?

20 MR. SHEEHY: Same objection and
21 instruction, and this time I'll instruct you not to
22 answer the question as that goes to the substance.

23 BY MR. FRAM:

24 Q. What about Mr. Bob Latta, did you meet with
25 him?

1 ADAM PERRY KINCAID

2 A. I believe so, but I don't have any
3 recollection of meeting with Mr. Latta.

4 Q. What about Mr. Steve LaTourette?

5 A. Yes.

6 Q. In person here in Washington?

7 A. Yes.

8 Q. What do you recall about that conversation?

9 MR. SHEEHY: And I'm going to instruct the
10 witness on the grounds of the First Amendment
11 privilege not to reveal the internal communications
12 within the association. If you can answer the
13 question without revealing the internal
14 communications of the association, you may.

15 BY THE WITNESS:

16 A. You asked me about the conversation I had
17 with Mr. LaTourette?

18 Q. Yes, please.

19 A. Which conversation?

20 Q. How many did you have?

21 A. Multiple.

22 Q. And how many times?

23 A. I don't know how many times.

24 Q. But you met with him more than twice?

25 A. Often.

1 ADAM PERRY KINCAID

2 Q. More than five times?

3 A. Yes.

4 Q. More than ten times?

5 A. Yes.

6 Q. More than 20 times?

7 A. I don't know.

8 Q. Somewhere between 10 and 20?

9 MR. SHEEHY: Objection, calling for the
10 witness to speculate.

11 MR. FRAM: Your best recollection.

12 MR. SHEEHY: Same objection. Go ahead.

13 BY THE WITNESS:

14 A. More than 15, less than 30.

15 Q. Fair enough.

16 This is in that August, September time
17 frame?

18 A. Yes, sir.

19 Q. Were all these in person or some on the
20 phone?

21 A. Those were all in person.

22 Q. And they were all about Ohio redistricting;
23 is that right?

24 A. Yes, sir.

25 Q. What do you recall about any of those

1 ADAM PERRY KINCAID

2 conversations?

3 MR. SHEEHY: Same instruction and
4 objection. If you can answer the question without
5 revealing internal communications within the
6 association, you may.

7 BY THE WITNESS:

8 A. Mr. LaTourette was responsible for -- let
9 me rephrase that. Mr. LaTourette would meet with
10 Democrat members of the Ohio delegation and get
11 their input on the Ohio congressional map and would
12 communicate information back to them as well.

13 Q. And what do you recall about those
14 communications with the Democrats?

15 MR. SHEEHY: Objection on the grounds of
16 the First Amendment privilege. If you can answer
17 the question without revealing the internal
18 communications of the association, you may.

19 BY THE WITNESS:

20 A. Can you repeat your question?

21 Q. What did Mr. LaTourette say about what the
22 Democrats were saying about the map?

23 MR. SHEEHY: Objection, hearsay.

24 MR. FRAM: That's preserved. We're not
25 doing that here.

1 ADAM PERRY KINCAID

2 MR. SHEEHY: If you can answer the question
3 without revealing the substance of the
4 communications as the question is specifically
5 asking for internal associational communications,
6 you can answer the question.

7 BY THE WITNESS:

8 A. The Democrats would give Mr. LaTourette
9 information on precincts or communities that they
10 would like to be in their districts. Ms. Kaptur and
11 Mr. Kucinich who had been drawn together in a
12 district were interested in the makeup of their
13 parts of those districts, specifically the DMA's,
14 which are the designated market areas of Toledo and
15 Cleveland and how much of each was inside their
16 districts -- their district. I know Congresswoman
17 Fudge was interested in the precincts and
18 communities that were included in her district, as
19 was Mr. Ryan.

20 Q. What was Congressperson Fudge interested
21 in? You said she was interested in what would be
22 her district.

23 A. Ms. Fudge wanted a district that ran from
24 Cleveland to Akron.

25 Q. Do you recall what was said back to

1 ADAM PERRY KINCAID

2 her -- let me back up. Did she communicate that in
3 a written request or or through a person? How was
4 that communicated?

5 A. My understanding is that that was
6 communicated multiple ways through multiple avenues.

7 Q. To whom?

8 A. My understanding is that what she wanted
9 was communicated to the state legislature as well as
10 to Mr. LaTourette.

11 Q. And do you recall what the response was to
12 her request?

13 MR. SHEEHY: Objection. If you can answer
14 the question without revealing internal
15 communications within the association, you may.
16 Objection on First Amendment privilege If you're
17 unable to answer the question.

18 BY THE WITNESS:

19 A. Could you repeat the question?

20 Q. Do you recall what the response was to
21 Congressperson Fudge's request to include Akron in
22 her district?

23 A. I recall that she probably stated she was
24 thrilled by the district that was passed out of the
25 Ohio legislature. She may not have used the word

1 ADAM PERRY KINCAID

2 thrilled but that she was pleased with the district
3 that she was drawn into.

4 Q. Let me try and be more precise. Do you
5 recall what the response was by any Republicans to
6 to Ms. Fudge's request to have Akron included in her
7 district?

8 MR. SHEEHY: I think there I'm going to
9 object on the grounds of First Amendment privilege
10 and instruct you to not answer the question as
11 that's going to the specific communications within
12 the association.

13 BY MR. FRAM:

14 Q. Do you recall any communications regarding
15 the effect of including Akron in Congressperson
16 Fudge's district on Congressperson Sutton?

17 MR. SHEEHY: I'm sorry. Can you repeat the
18 question?

19 MR. FRAM: Do you recall any communications
20 regarding the impact on Congressperson Sutton of
21 including Akron in Congressperson Fudge's district?

22 MR. SHEEHY: Objection on the grounds of
23 the First Amendment privilege. I instruct the
24 witness to answer the question if you can but not
25 reveal any internal associational communications if

1 ADAM PERRY KINCAID

2 you can answer.

3 BY THE WITNESS:

4 A. I don't know of any external to the
5 association communications regarding Congresswoman
6 Sutton.

7 Q. Were there internal communications?

8 MR. SHEEHY: You can answer that precise
9 question.

10 BY THE WITNESS:

11 A. Yes.

12 Q. Can you please tell me what those internal
13 communications were?

14 MR. SHEEHY: Objection on the grounds of
15 the First Amendment privilege and I instruct the
16 witness not to answer the question as it would
17 reveal internal associational communications.

18 BY MR. FRAM:

19 Q. Do you recall anything else about your
20 communications with Representative LaTourette
21 regarding congressional redistricting in Ohio in
22 2011?

23 MR. SHEEHY: And I, again, instruct the
24 witness on the grounds of the First Amendment
25 privilege to not answer the question if doing so

1 ADAM PERRY KINCAID

2 reveals the internal associational communications.

3 BY THE WITNESS:

4 A. I'm just thinking. I don't recall anything
5 additional than what I've already discussed with
6 you.

7 Q. What about Congressman Jean Schmidt, any
8 communications with Congressperson Schmidt?

9 A. Yes.

10 Q. And what did that -- what did those
11 communications concern, please?

12 MR. SHEEHY: Objection on the grounds of
13 the First Amendment privilege and instruct you to
14 not reveal the substance of any internal
15 associational communications.

16 BY THE WITNESS:

17 A. And I refer you back to paragraph 12 where
18 I talk about meeting with the members to go over the
19 contours of their districts.

20 Q. And what do you recall talking with
21 Congressperson Schmidt about as regards the contours
22 of the district?

23 MR. SHEEHY: Same objection and this time
24 I'll instruct you to not answer the question as
25 doing so would reveal internal associational

1 ADAM PERRY KINCAID

2 communications.

3 BY MR. FRAM:

4 Q. What about Congressperson Bill Johnson?

5 A. Yes.

6 Q. Did you meet in person with Congressperson

7 Johnson?

8 A. Yes.

9 Q. More than one time?

10 A. I don't recall meeting with him more than
11 once.

12 Q. Do you recall any conversations as to
13 whether or not he would be paired with
14 Congressperson Gibbs?

15 MR. SHEEHY: Objection on the grounds of
16 the First Amendment privilege and instruct the
17 witness not to answer the question as it involves
18 substantive internal communications.

19 BY MR. FRAM:

20 Q. Can you tell me anything about the
21 conversations with Congressperson Johnson about the
22 contours of his district?

23 MR. SHEEHY: Objection -- same objection,
24 same instruction.

25 BY MR. FRAM:

1 ADAM PERRY KINCAID

2 Q. What about Congressperson Pat Tiberi?

3 A. Yes.

4 Q. Did you meet in person?

5 A. Yes.

6 Q. More than once?

7 A. I believe so.

8 Q. How many times?

9 A. I don't recall.

10 Q. What do you recall about the conversations
11 of those communications?

12 MR. SHEEHY: Objection on the grounds of
13 the First Amendment privilege and instruct the
14 witness to not reveal the internal communications of
15 the association. You may answer the question if in
16 answering you don't reveal those internal
17 communications and provide the general subject
18 matter.

19 BY THE WITNESS:

20 A. As stated in my affidavit, I would have
21 gone over the contours of his district.

22 Q. And what do you recall about the
23 conversation with Representative Tiberi regarding
24 the contours of his district?

25 MR. SHEEHY: Same objection and I will

1 ADAM PERRY KINCAID

2 instruct the witness to not answer the question as
3 it's a specific question about the substance of the
4 internal associational communications.

5 (Kincaid Exhibit 2 was marked
6 as requested.)

7 BY MR. FRAM:

8 Q. We're going to mark next as Exhibit 2 a
9 document that's got Bates number -- well, actually
10 it's a multiple-page document with only one Bates
11 number on it because I think it was produced to
12 us -- it may have been electronically in native
13 form. I'll tell you the number. It's NRCC-0000,
14 that's four zeros, 31. So I'll have to refer to the
15 different pages of the document without different
16 Bates numbers.

17 My first question to you, Mr. Kincaid, is
18 whether you've ever seen this PowerPoint before?
19 It's a PowerPoint, I should say for the record, that
20 says at the top "The National Republican
21 Congressional Committee" and there are a series of
22 what might be tabs across the top. The far left is
23 "Redistricting" and that's the one that's
24 highlighted in this set. Have you ever seen this
25 before?

1 ADAM PERRY KINCAID

2 (Witness reviewing document.)

3 BY THE WITNESS:

4 A. I'm certain I did.

5 Q. You'll see at the bottom of the first page
6 "Strengthening the majority in 2012"; do you see
7 that?

8 A. Yes.

9 Q. In 2011, 2012 you were the redistricting
10 coordinator for the Republican -- the National
11 Republican Congressional Committee, correct?

12 A. Yes, sir.

13 Q. Do you recall whether you had any input
14 into this document, the creation of this document?

15 A. Yes.

16 Q. Okay. By the way, do you recall, was there
17 an individual author for this document or was it a
18 collective project?

19 A. This would be collective.

20 Q. Were you one of the people who worked on
21 creating it?

22 A. I would have helped to create the content.

23 Q. Who else, please?

24 A. Who else would have created content for
25 this?

1 ADAM PERRY KINCAID

2 Q. Yes, please.

3 A. The Patriot Program would have been -- I
4 think that was Liesl Hickey. I believe so. I think
5 that was her title then. The Drive To 25, Drive To
6 30 pages would be political documents. So someone
7 in the political department, but I don't know who.
8 I don't recall the name of the person who was in
9 charge of Young Guns at this time. The maps on the
10 Young Gun pages would have been provided by me, as
11 would the election results and the media market
12 splits.

13 Q. I'm sorry. Those media market --

14 A. The media market splits and the election
15 results would have been provided by me, but the
16 slide was put together by someone else. The PVI's
17 also would have been provided by me.

18 Q. Maybe we can locate on which slide the
19 PVI's are, the PVI's you're talking about. Let's
20 take a little bit of time. If you look at the --
21 okay. So just before the -- at the beginning of the
22 second slide of the Young Guns section there's a
23 table that actually has the acronym "PVI" as the far
24 right column; do you see that?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. And there's a bunch of numbers, R plus 4
3 and D plus 2 and so forth; do you see that?

4 A. Yes.

5 Q. But there's a lot of other tables with R
6 plus numbers and D plus numbers throughout this
7 PowerPoint; do you see that?

8 A. Yes.

9 Q. Is it your understanding those are also PVI
10 numbers?

11 MR. SHEEHY: Can you be specific which
12 slide you're talking about?

13 BY MR. FRAM:

14 Q. Sure. Let's take it one at a time. On the
15 first page are there any -- are any of the numbers
16 on that page PVI numbers?

17 A. No.

18 Q. Okay. On the second page do you see where
19 it says "R seats moved into play by redistricting";
20 do you see that?

21 A. Yes.

22 Q. Are any of those PVI numbers?

23 A. Yes.

24 Q. And did you provide those numbers?

25 A. I don't have a date for when this was

1 ADAM PERRY KINCAID

2 created. If this was before the Cook political
3 report released their official PVI's, then yes. If
4 it was after, then no. I don't know when this
5 document was created. There's no date on it.

6 Q. Well, that's a good point. Let's talk
7 about that just a little bit. If you go back to
8 that Young Guns section, you'll notice that I think
9 for every one of them it says when the -- at least
10 the first one, let's start with Jesse Kelly; do you
11 see that page?

12 A. I do.

13 Q. It tells when early voting is going to
14 begin; do you see that?

15 A. I do.

16 Q. Does it help refresh your recollection that
17 this was generated before May 17, 2012?

18 A. That's certainly possible, yes. I would
19 assume that's correct.

20 Q. And similarly if you go on to -- each one
21 of these Young Guns will tell you the primary date;
22 do you see that?

23 A. I do.

24 Q. And those look like they're in June 2012,
25 right?

1 ADAM PERRY KINCAID

2 A. Right.

3 Q. Does it also help refresh your recollection
4 that this was created before June 2012?

5 A. It tells me that this document was produced
6 before -- the earliest date we have here is May 17.
7 So it would be before May 17th. What I would not be
8 able to tell you is when the Cook political report
9 released their PVI's. I don't recall what that date
10 was. That wouldn't be in here.

11 Q. And if you go to the second page of the
12 document it says "R seats moved into play by
13 redistricting"; do you see that?

14 A. I do.

15 Q. Does it help refresh your recollection this
16 document was created after the redistricting maps
17 had been drawn in 2011?

18 A. For those states, yes.

19 Q. So is it your understanding that this
20 document was created sometime between the conclusion
21 of the drawing of the redistricting maps in 2011 and
22 May of 2012?

23 A. I don't recall when the last state to
24 redistrict was, when that happened. So I don't
25 think I could tell you that. What I would say is

1 ADAM PERRY KINCAID

2 that it would be after these states on this page had
3 completed their redistricting.

4 Q. Okay.

5 A. Because they would not have appeared on
6 this sheet if they were not complete.

7 Q. So I understand, as a functional matter
8 this PowerPoint was created after redistricting was
9 completed but before primaries took place; is that
10 right?

11 A. In those states. In these states here
12 specifically.

13 Q. But in terms of putting a time frame around
14 it, I understand 2011 you're not sure about because
15 some of them might have gone into 2012; is that
16 right?

17 A. Yes. Some states would have been
18 redistricting into the summer of 2012, which would
19 be past your May 7th date. So I couldn't tell you
20 what that date would be.

21 Q. So sometime between the states here, okay,
22 you're saying that they could have been still
23 redistricting in the summer of 2012?

24 A. No. If they are on page 2 these states
25 would have been complete by that point.

1 ADAM PERRY KINCAID

2 Q. Fair enough. In any event, it's between --
3 this PowerPoint was created to reflect information
4 that existed between the end of redistricting and
5 the beginning of the primaries; is that right?

6 MR. SHEEHY: Object to form. Go ahead.

7 BY THE WITNESS:

8 A. It's possible some of these were
9 pre-primary, some of them were post-primary. I
10 don't think all -- just because it's on that page
11 doesn't mean it has anything to do with a primary
12 election. There's a lot of moving pieces here. So
13 it's not quite that clear.

14 Q. Was this PowerPoint created at one
15 particular time?

16 A. No.

17 Q. It was created over -- okay. Was it ever
18 presented to any group of people, this PowerPoint?

19 MR. SHEEHY: Objection, foundation.

20 BY MR. FRAM:

21 Q. Was this PowerPoint ever presented to
22 anybody?

23 MR. SHEEHY: Same objection.

24 BY THE WITNESS:

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. Who was it presented to?

3 A. I don't know.

4 Q. Did you ever present this PowerPoint to
5 anybody?

6 A. No.

7 Q. Do you recall anybody who did?

8 A. Do I recall anybody presenting this
9 PowerPoint?

10 Q. Yes.

11 A. I don't recall being in a meeting where
12 this PowerPoint was presented.

13 Q. Was it ever sent to anybody?

14 MR. SHEEHY: Objection, foundation.

15 MR. FRAM: I'm not sure where that
16 objection is coming. Were any versions of this
17 PowerPoint ever sent to anybody?

18 MR. SHEEHY: You can answer that
19 question.

20 BY THE WITNESS:

21 A. I have no way of knowing. I would not have
22 been in possession of this PowerPoint. So I don't
23 know who it would or would not have been sent to.

24 Q. Did you ever see this PowerPoint at any
25 time in 2012?

1 ADAM PERRY KINCAID

2 A. I saw so many PowerPoints in 2011 and 2012.
3 I couldn't tell you if I saw this PowerPoint or not.

4 Q. All right. Let's take a look at the second
5 page. It says "R seats moved into play by
6 redistricting"; do you see that?

7 A. Yes.

8 Q. Did you have any input as regards the
9 content on that page?

10 A. Yes.

11 Q. And what was the input that you had,
12 please?

13 A. I would have been responsible for looking
14 at the old PVI's of these districts and the new
15 PVI's and providing all this information on here and
16 then totaling it up.

17 Q. In regards to the old PVI and the new
18 PVI's, what do you mean by that? Difference between
19 redistricting and after?

20 A. The PVI's in the districts in 2010, when
21 the 2010 elections occurred, versus the PVI's in the
22 upcoming elections for 2012 in the new districts.

23 Q. And the differences appear in the numbers
24 in the parentheses on the page? Do you see, for
25 example, for CA10-Denham it says "R plus 5" and then

1 ADAM PERRY KINCAID

2 "(minus 4)"; do you see that?

3 A. Yes.

4 Q. So that minus 4 shows a difference between
5 the two PVI's?

6 A. Yes.

7 Q. And what does minus 4 refer to?

8 A. It would mean that California 10 or more
9 specifically whatever seat Mr. Denham was in before,
10 I don't remember what district, he may have been
11 California 9 or 38 or whatever number it would be,
12 was an R plus 9 is what he was elected in. Then the
13 new district that he would be running for
14 re-election in in 2012 would be R plus 5.

15 Q. So minus 4 means a decrease in Republican
16 strength by 4; is that right?

17 A. That's right.

18 Q. And then I want to turn to the page that
19 says -- I believe it's the fifth slide in the set.
20 The heading is "R seats moved out of play"; do you
21 see that?

22 A. I do.

23 Q. All right. Did you have any input on this
24 page?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. And if you go down to the bottom of the
3 first column you see "OH-12 Tiberi"; do you see
4 that?

5 A. I do.

6 Q. That refers to the Ohio 12th Congressional
7 District; is that right?

8 A. That's correct.

9 Q. And you see the number there says "R plus 8
10 (plus 9)"; do you see that?

11 A. I do.

12 Q. What does that mean, please?

13 A. It means that Mr. Tiberi would have been
14 elected in a D plus 1 seat in 2010 and then in 2012
15 he was running for re-election in an R plus 8
16 district.

17 Q. So was that as a result of the
18 redistricting there was a net gain of 9 points in
19 the PVI; is that right?

20 MR. SHEEHY: Objection to form of that
21 question.

22 BY THE WITNESS:

23 A. I would say Mr. Tiberi was in a district
24 that was an R plus 8 which was 9 points more
25 Republican than the district he was elected in in

1 ADAM PERRY KINCAID

2 2010.

3 Q. His new district was 9 points more

4 Republican?

5 A. The district he would be running for

6 re-election in in 2012.

7 Q. Which was the new district drawn in 2011,
8 correct?

9 MR. SHEEHY: Objection, lack of foundation.

10 BY MR. FRAM:

11 Q. Well, his district was drawn in 2011,
12 wasn't it?

13 A. Yes.

14 Q. And you were involved in the drawing of
15 that district?

16 MR. SHEEHY: Objection to form and vague
17 and ambiguous.

18 MR. FRAM: You can answer. There's no
19 instructions.

20 MR. SHEEHY: Well, I'll give an instruction
21 if answering the question would reveal the internal
22 communications and workings of the association on
23 the grounds of the First Amendment privilege.

24 BY THE WITNESS:

25 A. I think you asked two different questions.

1 ADAM PERRY KINCAID

2 If you could --

3 Q. Let's take them one at a time. It's a
4 matter of public record, isn't it, that Ohio
5 District 12 was redrawn in 2011, correct?

6 A. Yes.

7 Q. And this plus 9 PVI number that appears on
8 this page reflects the difference between that new
9 district that was drawn in 2011 and the prior
10 district that existed before the redistricting,
11 correct?

12 A. It represents a district between the
13 district Mr. Tiberi was elected in in 2010 and the
14 one he'd be running for re-election in in 2012,
15 yes.

16 Q. And that one he'd be running for in 2012
17 was the new district that was drawn in 2011,
18 correct?

19 MR. SHEEHY: Objection, asked and answered.

20 MR. FRAM: Not yet.

21 MR. SHEEHY: Same objection.

22 BY MR. FRAM:

23 Q. It's a pretty simple question which is
24 maybe why -- sometimes questions are so simple you
25 think they're tricky. They're not. This one

1 ADAM PERRY KINCAID

2 here -- sorry to editorialize, but all I'm saying is
3 the district he was running for in 2012 was the
4 district that was drawn in 2011, that's all?

5 A. Yes.

6 Q. Similarly going over to Ohio 1, Chabot, do
7 you see that in the second column?

8 A. I do.

9 Q. Did you have any input into the information
10 that appears next to -- just to the right of the
11 name Chabot?

12 A. I did.

13 Q. And what was your input there, please?

14 A. It's the same as with the other ones. I
15 would have provided the data for the slide.

16 Q. And do you see there it says "R plus 6
17 (plus 7)"; do you see that?

18 A. Yes.

19 Q. What's that mean?

20 A. It means that Mr. Chabot ran for election
21 in 2010 in a D plus 1 seat and would be run for
22 re-election in 2012 in an R plus 6 district.

23 Q. And if we go to the next line down, "Ohio
24 15 Stivers"; do you see that?

25 A. I do.

1 ADAM PERRY KINCAID

2 Q. And there's information directly to the
3 right of that "R plus 6 (plus 7)"; do you see that?

4 A. Yes.

5 Q. What's that mean, please?

6 A. Would that mean Mr. Stivers was elected in
7 a D plus 1 district and was running for re-election
8 in 2012 in a R plus 6 district.

9 Q. And you provided that data, correct?

10 A. I did.

11 Q. Taking them one at a time starting with
12 Ohio 12, do you know if any of the reasons why
13 Mr. Tiberi's district was now plus 9 for the
14 Republicans?

15 MR. SHEEHY: Objection on the grounds of
16 the First Amendment privilege and instruct the
17 witness if you can answer the question without
18 revealing the internal communications of the
19 association, you may.

20 BY THE WITNESS:

21 A. It was R plus 8, plus 9 is the change from
22 the previous district.

23 Q. Right.

24 A. And it would be -- Mr. Tiberi had portions
25 of Columbus in his district previously that he did

1 ADAM PERRY KINCAID

2 not have in his district after they were redrawn in
3 2011, which would be why the PVI had changed, a part
4 of why the PVI had changed.)

5 Q. Another part was -- was another part the
6 inclusion of some rural counties to the west of
7 Columbus in District 12?

8 MR. SHEEHY: Same objection on the grounds
9 of the First Amendment privilege. You may answer
10 the question without revealing any of the internal
11 communications of the association.

12 BY THE WITNESS:

13 A. I'd have to look at an old and new map to
14 answer that question.

15 Q. Fair enough.

16 What about Ohio District 1 where it's now a
17 plus 7, the district itself is R plus 6, do you
18 recall any reasons why that happened?

19 MR. SHEEHY: Same objection on the grounds
20 of the First Amendment privilege. You may answer
21 the question unless doing so would reveal the
22 internal associational communications.

23 BY THE WITNESS:

24 A. Generally speaking, I know that Ohio 1
25 became 7 points more Republican because of the way

1 ADAM PERRY KINCAID

2 that it was redrawn in 2011.

3 Q. And did some of that redrawing include the
4 fact that Warren County was now included in District
5 1?

6 MR. SHEEHY: Same objection and
7 instruction.

8 BY THE WITNESS:

9 A. That would have been a part of it, yes.

10 Q. Would another part of it have been the way
11 in which Hamilton County was drawn in 2011? That's
12 a bad question.

13 Would part of that include the carving out
14 of certain portions of Hamilton County and taking
15 them out of District 1 in 2011?

16 MR. SHEEHY: Objection on the grounds of
17 the First Amendment privilege. You may answer the
18 question if doing so does not reveal the internal
19 communications of the association.

20 BY THE WITNESS:

21 A. Yes, but I'd have to look at an old and new
22 map for specifics.

23 Q. And let's look at Ohio District 15,
24 Stivers, do you recall any of the reasons why that
25 was now plus 7 in an R plus 6 district?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: Same objection on the grounds
3 of the First Amendment privilege. You may answer
4 unless in doing so reveals internal communications
5 within the association.

6 BY THE WITNESS:

7 A. Ohio 15 would have become 7 points more
8 Republican for the same reason Ohio 12 became 9
9 points more Republican. A new district was created
10 in Franklin County and because of that the other
11 districts no longer contained portions of Columbus
12 as they previously had.

13 Q. And those were heavily Democratic portions
14 of Columbus; is that right?

15 A. To the best of my recollection, yes.

16 Q. One last question for you about this
17 document. It says at the top of the page "R seats
18 moved out of play"; do you see that?

19 A. I do.

20 Q. What does that mean?

21 MR. SHEEHY: Objection on the grounds of
22 the First Amendment privilege. You can answer the
23 question if your answer does not reveal the internal
24 communications within the association.

25 BY THE WITNESS:

1 ADAM PERRY KINCAID

2 A. I think this was an editorial statement. I
3 couldn't say any more to it than what is here.

4 Q. Was there any cutoff point or criteria in
5 which a district was to be moved in or out of play?

6 MR. SHEEHY: Objection, and I think on that
7 one I'm going to instruct the witness to not answer
8 the question because doing so would reveal internal
9 associational communications.

10 BY MR. FRAM:

11 Q. Do you know who wrote the words "R seats
12 moved out of play"?

13 A. I don't recall.

14 Q. Did you review this slide before it was
15 finalized?

16 A. Yes.

17 Q. Do you recall telling anybody it wasn't
18 true what was set down in the slide, any of the
19 facts here were wrong?

20 MR. SHEEHY: Objection on the grounds of
21 the First Amendment privilege. You're asking for
22 internal associational communications. I instruct
23 the witness not to answer the question.

24 BY MR. FRAM:

25 Q. Did you think any of the information on

1 ADAM PERRY KINCAID

2 this slide was wrong when you saw it? Let me back
3 up. You did see this slide before it was finalized;
4 is that right?

5 A. Yes.

6 Q. You reviewed it for accuracy; is that
7 right?

8 A. I did.

9 Q. Did anything about it strike you as
10 inaccurate?

11 MR. SHEEHY: Objection on the grounds of
12 the First Amendment privilege. You're asking for
13 his mental impressions on how he would advise the
14 association. So I'm going to instruct the witness
15 not to answer that question.

16 BY MR. FRAM:

17 Q. Did you ever tell anybody that there was
18 anything inaccurate about this slide?

19 MR. SHEEHY: Same objection on the grounds
20 of the First Amendment privilege and instruction.

21 MR. FRAM: Off the record.

22 (Whereupon, at 12:38 p.m., the
23 deposition was recessed, to
24 reconvene at 1:30 p.m., this
25 same day.)

1 ADAM PERRY KINCAID

2 AFTERNOON SESSION

3 (1:42 p.m.)

4 ADAM PERRY KINCAID,

5 the witness at the time of recess, having been
6 previously duly sworn, was further examined and
7 testified as follows:

8 EXAMINATION

9 (Resumed)

10 (Kincaid Exhibit 3 and

11 Exhibit 4 were marked as

12 requested.)

13 BY MR. FRAM:

14 Q. We've marked as Exhibit 3 a document with
15 the Bates No. TIBERI-000039, and Exhibit 4 is a
16 document that's the same Bates number but with the
17 word "Metadata" after it. I'll indicate that we
18 generated the metadata from the document that was
19 provided and we redacted certain work product items
20 in there.

21 MR. SHEEHY: Mr. Fram, I'll state on the
22 record that we do not stipulate to the accuracy of
23 what is shown in the metadata.

24 BY MR. FRAM:

25 Q. I'm going to start with -- Mr. Kincaid, the

1 ADAM PERRY KINCAID

2 reason we're showing you this document is in the
3 metadata under the "Author" row your name appears?

4 A. Uh-huh.

5 Q. So I'm going to ask the question do you
6 recall authoring this document, Exhibit 3? Metadata
7 Exhibit 4 has your name on it indicating --
8 suggesting that you were the author of
9 TIBERI-000039, Exhibit 3. So my question is do you
10 recall authoring that document?

11 A. I actually don't recall authoring this
12 document, no.

13 Q. Do you recall working on the document at
14 all?

15 MR. SHEEHY: What's the question?

16 MR. FRAM: Working on it at all.

17 BY THE WITNESS:

18 A. This specific document, no. I mean, it's
19 the format that I would use. I just don't recall
20 the specific document.

21 Q. When you say "format," did you create
22 district-specific spreadsheets with the content
23 regarding election results?

24 A. I likely would have.

25 Q. Just so we're clear, the metadata also

1 ADAM PERRY KINCAID

2 gives us different dates and it has a creation date
3 of May 19, 2011; do you see that?

4 A. I do.

5 Q. And then the last modified date I believe
6 of December 14. Do you recall modifying these
7 district-specific spreadsheets while you were
8 working on redistricting related to Ohio in 2011?

9 A. Modify as the process --

10 Q. Yeah.

11 A. No, I don't recall updating this as the
12 process went on.

13 Q. You probably just did it one time and that
14 was it?

15 A. Based off the format of this document, this
16 looks like something I would have produced at the
17 end of a process.

18 Q. At the end?

19 A. Uh-huh.

20 Q. Okay. Well, let's talk about -- a couple
21 questions I have about the document. Do you
22 recall -- do you have any recollection of even
23 having seen this document at any point?

24 A. You're asking me to go back seven years.
25 It's hard to remember every Excel sheet I looked at

1 ADAM PERRY KINCAID

2 seven years ago. I don't have a specific memory
3 about this document.

4 Q. Do you recall looking at district-specific
5 spreadsheets with information of -- with this type
6 of information back in 2011?

7 A. Yes.

8 Q. And when I say "this type of information,"
9 let me clarify that a little bit. You see under
10 "Election results" you see there's six different
11 elections; do you see that?

12 A. I do.

13 Q. And do you recall including information
14 about the following elections in these spreadsheets
15 in 2011 regarding specific districts, the 2010
16 governors race; do you see that?

17 A. I do.

18 Q. Did you include that?

19 A. I would have, yes.

20 Q. And the 2010 attorney general race, would
21 you have included that information?

22 A. In this document, yes, I did.

23 Q. And in the 2008 presidential race?

24 A. Yes.

25 Q. And the 2006 attorney general race?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. And the 2006 auditor race?

4 A. Yes.

5 Q. And the 2004 presidential election?

6 A. I see that, yes.

7 Q. And then you see PVI; do you see that's the
8 next column?

9 A. I do.

10 Q. Did you include the PVI information?

11 A. This PVI is different than the Cook PVI. I
12 think this is -- this PVI might be an index of these
13 six races, but I don't recall the calculation. I
14 can tell you that's different than what was in the
15 PowerPoint presentation you showed me a while ago.

16 Q. I understand that. Was the reason because
17 you think it's a different index or a different
18 date?

19 A. I think it's a different index.

20 Q. Do you have any idea what this index is?

21 A. Yes.

22 Q. What is this?

23 A. I think this would be --

24 MR. SHEEHY: Objection on the grounds of
25 First Amendment privilege. I instruct the witness

1 ADAM PERRY KINCAID

2 you can answer the question so long as you're not
3 revealing any of the internal communications within
4 the association.

5 BY MR. FRAM:

6 Q. Can you tell me what this PVI is if it's
7 different from the other PVI we talked about?

8 A. This would be an Ohio-specific index.

9 Q. What does that mean?

10 A. It utilizes races from Ohio. You wouldn't
11 use Ohio races to judge the congressional map in a
12 different state.

13 Q. But which Ohio information was used for
14 this PVI index?

15 A. The races here on the sheet.

16 Q. Was that an average of those races?

17 A. I don't know how this was calculated.

18 Q. Let's take a look underneath that -- thank
19 you. Underneath the "Election results" row there's
20 a small table that says "County" on the left and
21 "Population" and "Percent of district"; do you see
22 that?

23 A. Yes.

24 Q. Do you see Franklin there on the top row?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. With a population of 216,382; do you see
3 that?

4 A. Yes.

5 Q. And then it says "Percent of district
6 30.01 percent"; do you see that?

7 A. Yes.

8 Q. Does that mean that under some version of
9 District 12 Franklin County was 30.01 percent of the
10 district?

11 A. Yes.

12 Q. Was that your understanding of how it was
13 in the final?

14 A. That would be my assumption. I do not
15 know. I mean, based off the date here, December 14,
16 2011, then it would -- that's my guess. I don't
17 recall. To answer your question from before, I
18 don't recall updating this over the course of the
19 process.

20 Q. So some of Franklin -- okay. Do you recall
21 whether some of Franklin County was still in
22 District 12 in the final?

23 A. Yes.

24 Q. Just less than they're used to be before
25 the redistricting?

1 ADAM PERRY KINCAID

2 A. I'd have looked at an old map and
3 percentages to answer that question.

4 Q. I think you testified earlier that a reason
5 why the PVI changed for District 12 was a certain
6 number of votes, Democratic votes were put into a
7 new district?

8 A. Correct.

9 Q. And that new district was District 3; is
10 that right?

11 A. I don't recall the number off the top of my
12 head.

13 Q. It was around Columbus?

14 A. Right.

15 (Kincaid Exhibit 5 and
16 Exhibit 6 were marked as
17 requested.)

18 BY MR. FRAM:

19 Q. We're going to mark as Exhibit 5 a document
20 with NRCC-000012 and Exhibit 6 the metadata for that
21 document with the same Bates number on the bottom as
22 an identifier. First question for Exhibit 5 have
23 you seen this document before?

24 A. Yes.

25 Q. And, in fact, it says on Exhibit 6 once

1 ADAM PERRY KINCAID

2 again if you go to "Author" your name shows up; do

3 you see that?

4 A. I do.

5 Q. Did you create Exhibit 5?

6 A. Yes.

7 MR. SHEEHY: Again, we'll -- go ahead.

8 BY MR. FRAM:

9 Q. Now, you see that in Exhibit 5 there's a --

10 on the right-hand side there's a set of columns

11 under the general heading of "As of July 25th"; do

12 you see that?

13 A. I do.

14 Q. Now, the metadata there's a creation date

15 of March 31, 2011; do you see that?

16 A. I do.

17 Q. Do you recall creating this document in the

18 March time frame of 2011 initially?

19 A. I created the parent document of this in

20 March of 2011.

21 Q. What do you mean by "the parent document"?

22 A. Template.

23 Q. And then you populated it with information

24 a little later; is that right?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. In fact, you populated the information
3 after July 25 because you've got July 25 information
4 here; is that right?

5 MR. SHEEHY: Objection to form.

6 BY MR. FRAM:

7 Q. Do you have any idea when you populated the
8 information?

9 A. This spreadsheet here says July 25th. So I
10 would assume July 25th.

11 Q. Or sometime shortly thereafter?

12 A. Yeah.

13 Q. Let's just walk through the document a
14 little bit.

15 A. Okay.

16 Q. By the way, anybody else work with you on
17 this document?

18 A. I don't remember anyone else working with
19 me on this document.

20 Q. Why did you prepare this document?

21 MR. SHEEHY: Objection, and I'm going to
22 instruct the witness to not answer that question on
23 the grounds of the First Amendment privilege as that
24 will go to his mental impressions in aiding the
25 association and communications within the

1 ADAM PERRY KINCAID

2 association.

3 BY MR. FRAM:

4 Q. Let's just take them -- go from right to
5 left, if we could, on the document. By "the
6 document" I'm talking about Exhibit 5 here.

7 Do you see it says "Current" and there's a
8 bunch of columns under the heading "Current" on the
9 left-hand side; do you see that?

10 A. I do.

11 Q. That goes down to district 18 in the bottom
12 row?

13 A. I do.

14 Q. Ohio before the redistricting had 18
15 districts, right?

16 A. It did.

17 Q. So were these the 18 districts of Ohio
18 before the redistricting, the current?

19 A. I believe so, yes.

20 Q. And then you see these four different
21 headings under "McCain," "Bush," "Average," and
22 "PVI"; do you see that?

23 A. I do.

24 Q. What's the McCain column? What are those
25 numbers in the McCain column for each district?

1 ADAM PERRY KINCAID

2 What do they refer to?

3 A. That would be the percent of the vote that
4 McCain got in that district in 2008.

5 Q. And the same thing for the Bush column?

6 A. 2004.

7 Q. 2004, of course.

8 Now, "Average," is that the average of the
9 two?

10 A. I don't know what the average here is.

11 Q. What about the "PVI," which PVI are we
12 talking about here?

13 A. Based off the PowerPoint presentation, this
14 looks like the Cook PVI.

15 Q. All right. That's because, for example,
16 Chabot down in Cincinnati, he was in a D plus 1
17 district under the old map, right?

18 A. Based off the PowerPoint, yes.

19 Q. And that's consistent with this?

20 A. Yes.

21 Q. That's just an example.

22 Then going over to the "As of July 25"
23 column; do you see those?

24 A. I do.

25 Q. Okay. And then just taking the District 1

1 ADAM PERRY KINCAID

2 row here for a minute to understand what this is
3 telling us, under McCain do you see there are two
4 different columns under McCain; do you see those?

5 A. I do.

6 Q. The first one says 52.57 percent. What
7 does that mean?

8 A. That would be the share of the vote that
9 John McCain would have gotten in 2008 in this
10 hypothetical District 1.

11 Q. The as of July 25 District 1?

12 A. Yes.

13 Q. And 7.72 percent, what does that refer to?
14 That's the next column over for District 1.

15 A. That would be the change from the current
16 map to the map as of July 25th.

17 Q. So does that say that McCain's performance
18 would have been 7.72 percent better under the as of
19 July 25 map compared to what the then-current map
20 was; is that right?

21 A. Yes.

22 Q. Okay. I assume the same points apply to
23 the Bush column; is that correct?

24 A. Yes.

25 Q. And to the GO -- you're not sure how the

1 ADAM PERRY KINCAID

2 average was done, but for the Ohio GOP average the
3 same logic applies?

4 A. I hadn't gone that far to the right. Yeah,
5 that's the Ohio GOP average, same thing.

6 Q. Finally PVI, are we talking about Cook PVI
7 here?

8 A. This would be the Cook PVI.

9 Q. So this shows that for CD1, Congressional
10 District 1, it instead of being a D plus 1 district
11 was now going to be an R plus 8 district; is that
12 right?

13 A. That's what that says, yes.

14 Q. And therefore in that final column on the
15 far right that's the net change, is that right, on
16 PVI?

17 A. Yes.

18 Q. So there's a net change or improvement for
19 the Republicans of 9 points on PVI in the as of July
20 25 congressional district proposed map as compared
21 to the then-current map; is that right?

22 A. I'm sorry. Can you ask that again?

23 Q. Sure. No. 9 in the far right column, what
24 that means is that the proposed map as of July 25,
25 2011 was 9 points more Republican than the PVI in

1 ADAM PERRY KINCAID

2 the then-current map which was D plus 1?

3 MR. SHEEHY: Objection as to which map are
4 we talking about, ambiguous.

5 BY MR. FRAM:

6 Q. I'll start again. Is it your understanding
7 there was some proposed map as of July 25, 2011?

8 A. Yes.

9 Q. And that's what these numbers refer to?

10 A. Yes.

11 Q. Okay. So I'm going to be talking about
12 that one.

13 A. Okay.

14 Q. I'll call that the July 25 map.

15 A. Okay.

16 Q. Do we understand each other?

17 A. Uh-huh.

18 Q. So the July 25 map was 9 points more
19 Republican than the then-current map on the PVI
20 index; isn't that right?

21 A. Yes.

22 Q. And similarly if you go down to CD12,
23 Representative Tiberi, the PVI on the July 25 map on
24 the PVI index was 11 points more Republican than the
25 then-current map; is that right?

1 ADAM PERRY KINCAID

2 A. That's what this says, yes.

3 Q. And if you go down to Congressional
4 District 15 the July 25 map was 7 points more in
5 favor of the Republicans than the then-current map;
6 is that right?

7 A. Yes, that's what this says.

8 Q. By the way, when you generated this
9 document did you use Maptitude in any way to help
10 you create it, "this document" being Exhibit 5?

11 MR. SHEEHY: I think that question goes to
12 his methods in assisting the association and
13 furthering the interest of the association. So I'm
14 going to instruct the witness not to answer the
15 question on the grounds of the First Amendment
16 privilege.

17 BY MR. FRAM:

18 Q. Is Maptitude capable of creating -- let me
19 back up.

20 You said you had created a parent map and
21 then you had to populate it with data, right?

22 A. Yes.

23 Q. Is Maptitude capable of assisting in that
24 function?

25 A. You could probably -- Maptitude has a

1 ADAM PERRY KINCAID

2 custom reporting function in it. So you could
3 create custom reports if you wanted to.

4 Q. Can custom reports have the information
5 such as that set forth in Exhibit 5?

6 A. You could create a custom report that would
7 produce that, but not in that format.

8 Q. Were there any other software tools other
9 than Maptitude that you were working with in 2011
10 that was capable of producing data in the form such
11 as we see in Exhibit 5?

12 MR. SHEEHY: You can answer.

13 BY THE WITNESS:

14 A. The data itself, no. The formatting would
15 have been Microsoft Excel.

16 Q. In terms of the data itself, was there any
17 software that would be useful in generating that?

18 A. Just Maptitude.

19 Q. I think we talked about this. Maptitude in
20 2011 had an export function that you could export
21 data into Excel?

22 A. Yes.

23 Q. Did you ever do that?

24 MR. SHEEHY: Again, I think that's going to
25 his mental impressions in furthering -- and methods

1 ADAM PERRY KINCAID

2 in furthering the association. Objection on First
3 Amendment privilege privilege and instruct the
4 witness not to answer.

5 (Kincaid Exhibit 7 was marked
6 as requested.)

7

8 BY MR. FRAM:

9 Q. 7 is an e-mail string, Gmail string. The
10 overall title of the Gmail is "New idea redraft,"
11 the Bates numbers are LWVOH-000018302, and the
12 earliest in time Gmail at the top of the first page
13 is at Friday September 2, 2011 at 6:41 p.m., an
14 e-mail from you -- well, appears to be from you, it
15 has your name, to Ray DiRossi, Heather Mann, and Tom
16 Whatman. Take a second to take a look at this
17 e-mail string and I'll ask you a few questions about
18 it.

19 MR. SHEEHY: The specific question is on
20 18303?

21 MR. FRAM: Well, I'm sorry, did I say
22 18303? Let's start with 18302. I apologize if I
23 misspoke. I'm going to start with 18302.

24 MR. SHEEHY: Okay.

25 MR. FRAM: It starts with 18302 and goes

1 ADAM PERRY KINCAID

2 all the way to 18308.

3 (Witness reviewing document.)

4 BY THE WITNESS:

5 A. Okay.

6 Q. So let's start with the first e-mail that I
7 mentioned, September 2, 2011 at 6:41 p.m. Now,
8 right after your name there's an e-mail address,
9 akincaid@nrcc.org; do you see that?

10 A. I do.

11 Q. Was that your work address in 2011?

12 A. Yes.

13 Q. Do you have any reason to doubt that you
14 sent this e-mail to Mr. DiRossi, Ms. Mann, and
15 Mr. Whatman?

16 A. No.

17 Q. Do you recall sending it?

18 A. No.

19 Q. Do you see Mr. Whatman had an address at
20 teamboehner.com; do you see that?

21 A. I see that.

22 Q. Do you recall sending him e-mails to that
23 address?

24 A. I didn't recall his e-mail address until
25 just now when I read it, but clearly I did.

1 ADAM PERRY KINCAID

2 Q. Do you see Ms. Mann and Mr. DiRossi the
3 e-mail was sent to their Gmail accounts; do you see
4 that?

5 A. I see that.

6 Q. Do you recall corresponding with them on
7 their Gmail accounts back in 2011 on redistricting
8 in Ohio?

9 A. Not until you put this in front of me, no.

10 Q. Do you have any reason to think you didn't
11 send them?

12 A. No.

13 MR. SHEEHY: Objection, vague.

14 MR. FRAM: You're right.

15 Do you recall any reason to think you
16 didn't them e-mails to those e-mail accounts? Thank
17 you, Counsel.

18 MR. SHEEHY: Objection. This e-mail or --

19 MR. FRAM: In general, the general
20 practice. Not this particular e-mail, but the
21 general practice, do you have any reason to think
22 that you would not be sending them e-mails about
23 Ohio redistricting to their Gmail accounts?

24 MR. SHEEHY: Objection, lack of foundation,
25 Objection to form.

1 ADAM PERRY KINCAID

2 BY THE WITNESS:

3 A. Based off this e-mail, I clearly sent it to
4 their Gmail address.

5 Q. Do you have any recollection of what the
6 phrase "new idea redraft" refers to?

7 A. Having looked at the document, it refers to
8 the map that's outlined here.

9 Q. Was that your new idea or someone else's
10 new idea? Whose new idea was it?

11 A. I don't recall.

12 Q. The next e-mail you can see there's an
13 attachment you're sending in that e-mail on Friday,
14 September 2, 2011; do you see that?

15 A. Yes.

16 Q. And that's a zip file; is that right?

17 A. That's right.

18 Q. Do you have any idea what sorts of
19 information you were including in zip files at that
20 time regarding Ohio redistricting in 2011?

21 MR. SHEEHY: I'll issue a cautionary
22 instruction. You can answer the question unless in
23 answering you would be revealing the internal
24 communications within the association.

25 BY THE WITNESS:

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. What kind of information were you sending?

4 MR. SHEEHY: Same objection and instruction
5 on the First Amendment privilege.

6 BY MR. FRAM:

7 Q. Are you going to answer the question or are
8 you not going to answer the question?

9 MR. SHEEHY: Your question was in general
10 what types of information?

11 MR. FRAM: I'll start with in general, but
12 also if you remember in this particular one if you
13 remember what you were sending.

14 MR. SHEEHY: So that's the question --

15 BY MR. FRAM:

16 Q. I'll take it either way. In general were
17 you sending your zip files and do you remember what
18 you were doing on this? We'll take one at a time if
19 you want. Let's do this one. Do you remember what
20 you were sending on this one?

21 A. I don't recall sending the e-mail until
22 just now. So I don't recall specifically what this
23 file would be. I would go back to my affidavit,
24 though, when it comes to what I would be
25 communicating, which would be the contours of

1 ADAM PERRY KINCAID

2 districts.)

3 Q. Maybe I can help you out. The e-mail
4 itself may help you out a little bit. If you go a
5 little further down, the next morning, Saturday,
6 September 3, 2011, 8:13 in the morning; do you see
7 that?

8 A. Yes.

9 Q. It starts at the bottom of 18302, goes over
10 to 18303; do you see that?

11 A. Okay. Yep.

12 Q. Do you see where it says "Attached are
13 screenshots and a spreadsheet for the block file I
14 sent last night. I've re-included the block file
15 here as well." Do you see that?

16 A. I do.

17 Q. Does that help you remember that you sent
18 block files in that zip file?

19 A. Yes, that must be what I sent in the zip
20 file.

21 Q. This also references you sending a
22 spreadsheet; do you see that?

23 A. Yes.

24 Q. And if you look through the attachment --
25 do you see the various little thumbnails of JPG

1 ADAM PERRY KINCAID

2 files; do you see those?

3 A. Yes.

4 Q. And then if you go all the way over to
5 18304, after the JPG files there's something called
6 "Ohio changes-new idea redraft.xls"; do you see
7 that?

8 A. Yes.

9 Q. And .xls that's an Excel identifier; isn't
10 that right?

11 A. Yes.

12 Q. And that would be a spreadsheet?

13 A. Yes.

14 Q. Do you recall any reason why you were
15 sending block files and JPG's of maps -- I should
16 back up for a minute. Do you know what a JPG is?

17 A. Uh-huh.

18 Q. What is JPG?

19 A. It's an image file.

20 Q. And these are image files of different
21 districts; is that right?

22 A. These three pictures here and those two,
23 yes, on pages 18303 and 18304 are JPEG images of
24 districts in the Ohio map statewide.

25 Q. Right. That last one that says "Ohio new

1 ADAM PERRY KINCAID

2 idea redraft.jpg," that's the Ohio statewide image?

3 A. That's a map of Ohio statewide, yes.

4 Q. Do you have any reason why you were sending
5 that information to Mr. DiRossi, Ms. Mann, and
6 Mr. Whatman in early September 2011?

7 MR. SHEEHY: I'll just issue a cautionary
8 instruction. You can answer the question unless
9 doing so violates the First Amendment privilege by
10 revealing internal associational communications.

11 BY THE WITNESS:

12 A. Yes.

13 Q. Why?

14 MR. SHEEHY: Same objection and
15 instruction.

16 MS. RIGGINS: Can we take a break for a few
17 minutes? There are some things in the back of this
18 document that I want to discuss with co-counsel.

19 MR. FRAM: Of course.

20 (A short break was had.)

21 MR. SHEEHY: Mr. Fram, I believe a question
22 was pending when we walked out and I just want to
23 put it on the record that neither myself nor
24 Mr. Gordon talked with the witness about your
25 question. We didn't talk to him about the question.

1 ADAM PERRY KINCAID

2 MR. FRAM: Okay.

3 MR. SHEEHY: Please go ahead and ask your
4 question.

5 BY MR. FRAM:

6 Q. We were talking about this Excel sheet,
7 "New idea redraft.xls.:

8 MR. SHEEHY: What page was that?

9 MR. FRAM: That was on 18304.

10 (Kincaid Exhibit 8 and

11 Exhibit 9 were marked as

12 requested.)

13 BY MR. FRAM:

14 Q. I'm going to mark next as 8 a document that

15 also has the Ohio changes. The Excel we were

16 looking at was "Ohio changes - new idea

17 redraft.xls." This is an Excel spreadsheet also

18 entitled "Ohio changes," but it has Bates

19 No. BRADEN-001387 and we also have some metadata.

20 We'll do that as 8 and then the metadata is 9.

21 I'm going to start with the metadata, which

22 has your name listed as the author of the document,

23 it has a last modified date of September 3, 2011; do

24 you see that?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. Do you recall -- have you ever seen this
3 document, Exhibit 8, before?

4 A. Yes.

5 Q. Did you create it?

6 A. Yes.

7 Q. And, again, you had the parent document
8 that you created back in March, right?

9 A. That's right.

10 Q. And then you populated it with data after
11 that, right?

12 A. Yes.

13 Q. And do you recall creating it in September
14 2011?

15 A. That's the date on it, but I don't recall
16 creating it in September 2011.

17 Q. Now, do you see -- looking at this now
18 together with reference to the .xls attachment back
19 in Exhibit 7, okay, page 18304; do you see that?

20 A. Yes.

21 Q. Is this spreadsheet, Exhibit 8, the
22 attachment that we see referenced on Exhibit 7?

23 MR. SHEEHY: Objection, form.

24 BY THE WITNESS:

25 A. I couldn't say with certainty unless I saw

1 ADAM PERRY KINCAID

2 the file size. Same title, though. So likely.

3 Q. Look at the heading on the right -- let's
4 go left to right on Exhibit 8. Once again, we've
5 got "Current"; do you see that?

6 A. Yes.

7 Q. And we've got the 18 districts under the
8 old map, right?

9 A. Yes.

10 Q. Okay. And then you go across the top going
11 to the right, okay, there's something called
12 "Franklin County sink hole"; do you see that?

13 A. I do.

14 Q. I think you said you created this document?

15 A. Uh-huh.

16 Q. What does "Franklin County sink hole" refer
17 to, please?

18 MR. SHEEHY: I'm going to object on the
19 grounds of the First Amendment privilege and
20 instruct the witness not to answer the question as
21 it would reveal internal communications within the
22 association.

23 BY MR. FRAM:

24 Q. Does "Franklin County sink hole" refer to
25 the effect of creating a new district in Franklin

1 ADAM PERRY KINCAID

2 County?

3 MR. SHEEHY: Same objection, same
4 instruction.

5 BY MR. FRAM:

6 Q. You testified before that a reason why
7 District 12 had an increased Republican PVI score
8 was because a new district was created in Franklin
9 County. Do you recall that testimony?

10 A. Yes.

11 MR. SHEEHY: Objection, form.

12 BY MR. FRAM:

13 Q. Does this spreadsheet, in fact, show us
14 just how that new district in Franklin County would
15 increase Republican strength in certain districts?

16 MR. SHEEHY: Same objection under the First
17 Amendment privilege and instruct the witness not to
18 answer the question on the grounds that it would
19 reveal internal associational communications and
20 mental impressions.

21 BY MR. FRAM:

22 Q. Did you communicate a spreadsheet at any
23 point to Mr. Braden -- take that back. Do you know
24 if Mr. Braden received a spreadsheet at any point
25 that indicated the effect of creating the new

1 ADAM PERRY KINCAID

2 district around Columbus?

3 A. Do I know if Mr. Braden received a
4 spreadsheet?

5 Q. Uh-huh.

6 MR. SHEEHY: Objection. I think an answer
7 to that question would reveal internal
8 communications within the association. So objection
9 under the First Amendment privilege and instruct the
10 witness not to answer the question.

11 BY MR. FRAM:

12 Q. If you look over on -- back on Exhibit 7,
13 pages 18307 through 08, do you see there's an e-mail
14 exchange there from Heather Mann to Mark Braden; do
15 you see that?

16 A. Yes.

17 Q. In one of them she's forwarding one of your
18 e-mails; do you see that?

19 A. I'm sorry. Who's forwarding my e-mail?

20 Q. Looks like -- well, looks like Heather Mann
21 is forwarding your new idea redraft e-mail --

22 MR. SHEEHY: Where are you?

23 BY MR. FRAM:

24 Q. -- 18308, on September 3, 2011 at 8:15 in
25 the morning; do you see that?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. And there's a forward of new idea redraft;
4 do you see that?

5 A. Yes.

6 Q. And what's being forwarded is your e-mail
7 of September 3, 2011. It looks like it was at 8:13
8 in the morning, a couple minutes earlier; do you see
9 that?

10 A. Yes.

11 Q. That's the e-mail we've just been
12 discussing back on pages 1803 through 04, is that
13 right, the same text where you say -- where it says
14 here "Attached are screen images and a spreadsheet
15 for the block file I sent last night"; do you see
16 that?

17 A. Yes.

18 Q. That's the same e-mail we've been
19 discussing before that had the "Ohio changes-new
20 idea redraft.xls" back on 18304?

21 A. Yes. The time stamp is throwing me off.

22 It's a UHC time stamp.

23 Q. Rather than the American -- you sent it at
24 8:13 in the morning and at 8:15 she sends it over to
25 Mr. Braden and Mr. Braden gave it to us here.

1 ADAM PERRY KINCAID

2 A. Okay.

3 Q. At any time do you recall discussing the
4 Ohio changes spreadsheet with Mr. Braden?

5 MR. SHEEHY: Objection on the grounds of
6 the First Amendment privilege in that answering the
7 question would reveal internal associational
8 communications protected under the First Amendment
9 and instruct the witness not to answer.

10 BY MR. FRAM:

11 Q. Do you recall discussing the Franklin
12 County sink hole with anyone at any time?

13 MR. SHEEHY: Same objection and same
14 instruction.

15 BY MR. FRAM:

16 Q. Looking down in Exhibit 8 that you created,
17 do you see that last row in the middle "10-open"; do
18 you see that?

19 A. Yes.

20 Q. Was that the new district around Columbus
21 that was being proposed?

22 A. I believe so, yes.

23 Q. That was going to be a heavily Democratic
24 district, you can tell that by the numbers, can't
25 you?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. Because you've got numbers here where you
4 say, for example, McCain only got 29.46 percent of
5 the vote?

6 A. Yes.

7 Q. And the PVI looking over at the right has a
8 D plus 16, right?

9 A. Yes.

10 Q. Now, you know how in Excel you can look at
11 a cell in Excel and there's a way of finding out
12 what the formula is that's used to calculate that;
13 are you familiar with that functionality?

14 A. Yes.

15 (Kincaid Exhibit 10 was marked
16 as requested.)

17 BY MR. FRAM:

18 Q. Now, we have here a screenshot of this
19 Excel sheet that we were just looking at, Exhibit 8,
20 part of it, just the part that has the Franklin
21 County sink hole part of it, not even all the way to
22 the end.

23 A. Okay.

24 Q. Because we got it in native form we were
25 able to extract this and there's a formula at the

1 ADAM PERRY KINCAID

2 top that I want to draw your attention to. It says
3 "Equal average (K3, M3, O3, S3, U3)"; do you see
4 that?

5 A. Yes.

6 Q. Like I say, you created this spreadsheet.
7 I'm just wondering if that refreshes your
8 recollection as to what was being averaged in the
9 Ohio GOP average, which columns were being averaged
10 looking at the Excel notations?

11 A. Yes.

12 Q. Was it, in fact, the case that what was
13 being averaged was the McCain percentage
14 51.25 percent in column K and then the Bush
15 percentage of 56.24 percent in column M and then it
16 was the 2010 governor rate 55.32 percent in column O
17 and then it was the -- it did not include the 2010
18 attorney general race in column Q, as far as I can
19 see. It skipped over then to the attorney general
20 race in 2006 55.52 percent in column S and finally
21 the 2006 auditor race of 59.63 percent in column U.
22 Am I reading the Excel right?

23 A. That's what that average would be.

24 Q. That was averaging five elections, is that
25 right, not six even though six are shown on the

1 ADAM PERRY KINCAID

2 chart?

3 A. That seems to be the case, yes.

4 Q. And the five are the five I just

5 identified. Does that refresh your recollection

6 that those were the five races that -- five

7 elections that were used as part of what we call the

8 unified index in 2011 in Ohio?

9 A. Again, I don't remember it being called the

10 unified index, I don't know where that term comes

11 from, but it does seem to be the average that was

12 used to create the Ohio GOP average as per what it

13 says here.

14 Q. Thank you. What you did, that's what the

15 five were?

16 A. Uh-huh.

17 Q. Thank you. Appreciate that.

18 (Kincaid Exhibit 11 and

19 Exhibit 12 were marked as

20 requested.)

21 BY MR. FRAM:

22 Q. Now, if you look at in Exhibit 7 -- in

23 Exhibit 7 we've got here on 18303 the attachment

24 under "Ohio-new idea redraft-9th District.jpg."

25 It's one of the attachments that you transmitted on

1 ADAM PERRY KINCAID

2 or about Friday, September 2 at 6:41 p.m.

3 By the way, do you have any doubt you sent
4 these JPEG's?

5 A. No.

6 MR. SHEEHY: Objection, just vague,
7 "these."

8 MR. FRAM: The ones identified on that
9 e-mail that's on page 18303 through 04. Thank you.
10 Appreciate that.

11 BY MR. FRAM:

12 Q. So looking here at Exhibit 11, which by the
13 way, has Bates No. BRADEN-001388, Mr. Braden
14 produced these to us, does this appear to be the
15 JPEG document that you transmitted?

16 MR. SHEEHY: Objection, calls for the
17 witness to speculate.

18 BY MR. FRAM:

19 Q. If it helps on the metadata, Exhibit 12,
20 you've got the file name "Ohio-new idea redraft-9th
21 District.jpg." Back on your e-mail of September 2,
22 2011 the title is "Ohio-new idea redraft-9th
23 District.jpg?"

24 MR. SHEEHY: I'll reiterate the same
25 objection, calls for the witness to speculate.

1 ADAM PERRY KINCAID

2 BY THE WITNESS:

3 A. The image isn't necessarily clear. The
4 only thing throwing me off is the created date here
5 is November 19, 2018 according to the metadata.

6 Q. Well, that's an interesting story on this
7 2018 dates that we see in some of these metadatas.
8 Everybody is producing documents, searching for
9 documents, and you know how metadata works, the last
10 time somebody messed with the file is the date that
11 shows up, when you printed it, opened it, whatever.
12 If you put aside that for a second --

13 A. They appear to be the same districts.

14 MR. SHEEHY: I'll just maintain my
15 objection for the record.

16 BY MR. FRAM:

17 Q. Now, District 9 you see in the middle in
18 Exhibit 11 it says 09 and underneath that it says
19 "minus 13.48"; do you see that?

20 A. I see that.

21 Q. What does "minus 13.48" refer to, if you
22 know?

23 MR. SHEEHY: I'll issue a cautionary
24 instruction you can answer the question unless doing
25 so would reveal internal communications within the

1 ADAM PERRY KINCAID

2 association. Objection on the basis of the First
3 Amendment privilege.

4 BY THE WITNESS:

5 A. Yes.

6 Q. What does that mean?

7 MR. SHEEHY: I'm going to instruct the
8 witness to not answer the question as that would
9 reveal internal associational communications under
10 the First Amendment privilege.

11 BY MR. FRAM:

12 Q. Did you ever communicate 09 -- excuse me --
13 District 9 had a minus 13.48 scoring. Did you ever
14 communicate that to anybody?

15 MR. SHEEHY: You can answer that precise
16 question.

17 BY THE WITNESS:

18 A. Yes.

19 Q. Who did you communicate it to?

20 A. To Ray DiRossi, Heather Mann, and Tom
21 Whatman.

22 Q. Why?

23 MR. SHEEHY: Objection. I'm going to
24 instruct the witness to not answer the question on
25 the grounds of First Amendment privilege.

1 ADAM PERRY KINCAID

2 BY MR. FRAM:

3 Q. Did you do so on or about September 2,
4 2011?

5 MR. SHEEHY: Objection, vague. Can you
6 rephrase the question?

7 MR. FRAM: I'm just asking whether or
8 not -- he said who he sent it to. I'm just trying
9 to find out -- just reconfirming when he sent it.
10 That's all I asked.

11 MR. SHEEHY: Okay. That's fine.

12 BY THE WITNESS:

13 A. Yes.

14 Q. Now, District 9 it's kind of got a long
15 shape to it, doesn't it? It goes all the way out
16 from Toledo all the way over to Cleveland, close to
17 it?

18 A. Yes.

19 Q. Do you recall ever talking with anybody
20 about that? Let me ask you a question. You've done
21 a lot of redistricting work. Are you familiar with
22 the concept of compactness?

23 A. Yes.

24 Q. Are you familiar with Reock scores and
25 Polsby-Popper scores?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. Those are different ways of measuring
4 what's called compactness; are you familiar with
5 that?

6 A. Yes.

7 Q. Have you ever talked to anybody about
8 whether or not District 9 was sufficiently compact
9 under anybody's idea of compactness?

10 MR. SHEEHY: You can answer the precise
11 question.

12 BY THE WITNESS:

13 A. I don't recall.

14 Q. Have you ever heard the term "snake on the
15 lake"?

16 A. I have heard the term "snake on the lake."

17 Q. And that refers to District 9, didn't it?

18 A. Yes.

19 Q. Did you ever use the phrase "snake on the
20 lake"?

21 A. I don't recall using the phrase "snake on
22 the lake." I might have been quoting someone else
23 saying that, but I don't recall using that term
24 myself.

25 Q. Do you recall who else might have called

1 ADAM PERRY KINCAID

2 District 9 snake on the lake?

3 MR. SHEEHY: You can answer the question so
4 long as you're not revealing internal communications
5 within the association.

6 BY THE WITNESS:

7 A. I don't have any recollection of who would
8 have called it snake on the lake.

9 Q. Do you recall ever looking at any
10 compactness scores for District 9?

11 MR. SHEEHY: You can answer the precise
12 question.

13 BY THE WITNESS:

14 A. No.

15 Q. Did you look at the compactness scores at
16 all when you were doing redistricting work in Ohio
17 in 2011?

18 MR. SHEEHY: I'm going to object on the
19 grounds that that's going to his mental impressions
20 in providing assistance within the association on
21 the grounds of the First Amendment privilege.

22 MR. FRAM: That's an instruction?

23 MR. SHEEHY: Yes, it is.

24 (Kincaid Exhibit 13 and
25 Exhibit 14 were marked as

1 ADAM PERRY KINCAID

2 requested.)

3 BY MR. FRAM:

4 Q. Why don't we mark next as 13 and 14 Bates
5 No. BRADEN-001389 and then same Bates number but
6 with the word "Metadata" attached. The metadata is
7 No. 14.

8 MS. RIGGINS: It just appears that the
9 author has maybe inadvertently been redacted on this
10 and maybe Exhibit 12.

11 MR. FRAM: No, I don't think that's --

12 MS. RIGGINS: Or wasn't included.

13 MR. FRAM: Believe me, if I had the author
14 I would have been delighted to provide it.

15 MS. RIGGINS: I wanted to make sure because
16 there's no way to verify the author on these.

17 MR. FRAM: I haven't asked any questions
18 about it.

19 MS. RIGGINS: I just wanted to be sure
20 because this was produced by Mr. Braden who is an
21 attorney.

22 MR. FRAM: Right. The metadata documents,
23 as I understand it, that we have here did not -- not
24 all metadata has author information. Sometimes you
25 get it, sometimes you don't.

1 ADAM PERRY KINCAID

2 MS. RIGGINS: I just wanted to make sure.

3 MR. FRAM: That's not what we redacted.

4 MS. RIGGINS: I just wanted to make sure.

5 MR. FRAM: Okay. Thank you.

6 BY MR. FRAM:

7 Q. What we're looking at here on 13, do you
8 recognize what district we're looking at on 13 here?

9 A. Yes.

10 Q. Which one is that?

11 A. It would be Marcia Fudge's district.

12 Q. That would be 11?

13 A. 11.

14 Q. There's a number under it "Minus 29.70."
15 Do you know what that means?

16 A. Yes.

17 Q. What's that mean?

18 MR. SHEEHY: I'm going to instruct the
19 witness to not -- if you can answer the question
20 without revealing internal associational
21 communications, you may answer. Otherwise I
22 instruct you to not answer the question and that's
23 on First Amendment privilege.

24 BY THE WITNESS:

25 A. I'll just leave that as is.

1 ADAM PERRY KINCAID

2 Q. You're not going to answer that one. Okay.

3 Is this the JPEG that you transmitted on or
4 about September 2, 2011 to Mr. DiRossi, Mr. Whatman,
5 and Ms. Mann looking at the title of the 11th
6 District JPEG?

7 MR. SHEEHY: I'll just object to lack of
8 foundation, calls for the witness to speculate.

9 BY THE WITNESS:

10 A. It appears to be.

11 (Kincaid Exhibit 15 and
12 Exhibit 16 were marked as
13 requested.)

14 BY MR. FRAM:

15 Q. For 15 it's BRADEN-001390 and for 16 it's
16 the same Bates number but with the word "Metadata."
17 Do you see back on Exhibit 7 the next JPEG on 18303
18 is entitled "Ohio-new idea redraft-Hamilton
19 County.jpeg"; do you see that?

20 A. Yes.

21 Q. And then looking over at Exhibit 15, does
22 this appear to be a JPEG that depicts Hamilton
23 County?

24 MR. SHEEHY: Objection, calls for the
25 witness to speculate.

1 ADAM PERRY KINCAID

2 BY THE WITNESS:

3 A. It appears to be.

4 Q. And you see the title in the metadata is
5 "Ohio-new idea redraft-Hamilton County.jpeg"; do you
6 see that?

7 A. Yes.

8 Q. And that's the same title as appears on
9 your -- as one of the attachments in your September
10 2011 6:41 p.m. e-mail?

11 A. Yes.

12 Q. Which is in Exhibit 7. Do you have any
13 reason to doubt that you sent this JPEG to
14 Mr. DiRossi, Ms. Mann, and Mr. Whatman on around
15 September 2, 2011?

16 MR. SHEEHY: Objection, vague as to "this
17 document."

18 MR. FRAM: I'm sorry. That you sent the
19 JPEG that appears in BRADEN-001390.

20 BY THE WITNESS:

21 A. You asked do I have any reason to doubt?

22 No, I do not.

23 (Kincaid Exhibit 17 and
24 Exhibit 18 were marked as
25 requested.)

1 ADAM PERRY KINCAID

2 BY MR. FRAM:

3 Q. 17 is BRADEN-001391 and 18 is the same
4 number with the word "Metadata" attached, and the
5 title from the metadata is "Ohio-new idea
6 redraft-Northeast.jpeg." I'd like to ask you to
7 please compare that to the last thumb name on page
8 18303 in Exhibit 7, your September 2, 2011,
9 6:41 p.m. e-mail.

10 A. Yes.

11 Q. And looking at Exhibit 17, is that, in
12 fact, an image of districts in northeast Ohio?

13 MR. SHEEHY: Objection to form.

14 BY THE WITNESS:

15 A. Could you repeat the question?

16 Q. Are we looking here in Exhibit 17 at images
17 of the district in northeast Ohio?

18 A. Yes.

19 Q. You've got 14, that was LaTourette, right?

20 A. Yes.

21 Q. And 13 that was Ryan?

22 A. Yes.

23 Q. And, of course, you see 11, we talked about
24 Marcia Fudge there and just the beginning of the
25 snake on the lake at 9; do you see that?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: Object to the
3 characterization.

4 BY MR. FRAM:

5 Q. When I say "snake on the lake," you know
6 what I'm talking about?

7 A. You're referring to the 9th District.

8 Q. We know what we're talking about. Do you
9 have any reason to doubt that you sent the JPEG set
10 forth in BRADEN-001391 to Mr. DiRossi, Ms. Mann,
11 Mr. Whatman on about September 2, 2011?

12 A. No.

13 (Kincaid Exhibit 19 and
14 Exhibit 20 were marked as
15 requested.)

16 BY MR. FRAM:

17 Q. For 19 BRADEN-001392 and for 20 it's the
18 same document but with the word "Metadata" attached.
19 On the metadata, which is Exhibit 20, do you see the
20 title under file name is "Ohio-new idea
21 redraft.jpeg." I'd ask you to please compare that
22 to page 18304 in Exhibit 7 the title of the JPEG
23 that's "Ohio-new idea redraft.jpeg. Same title,
24 right?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. In fact, in Exhibit 19 is that a JPEG shot
3 of the entire Ohio map; is that right?

4 A. Can you clarify the entire Ohio map?

5 Q. All the districts in the state.

6 A. According to this version?

7 Q. Yes.

8 A. Yes.

9 Q. Right. In other words, as of September --
10 was that the version as of September 2?

11 MR. SHEEHY: Objection, form.

12 BY MR. FRAM:

13 Q. Let me back up. Do you have any reason to
14 doubt you sent this JPEG to Mr. Whatman,
15 Mr. DiRossi, and Ms. Mann on or about September 2,
16 2011?

17 A. No.

18 Q. So was this the depiction of the map as
19 proposed as of that date?

20 MR. SHEEHY: Objection, form and vague just
21 as to "proposed."

22 BY MR. FRAM:

23 Q. Was this the map that you sent as of that
24 date, as of September 2?

25 MR. SHEEHY: Objection to form, lack of

1 ADAM PERRY KINCAID

2 foundation.

3 BY THE WITNESS:

4 A. This appears to be the map that I sent in
5 the e-mail.

6 Q. Let me ask you a question or two just about
7 Exhibit 19, the map. The various numbers that
8 appear on the map, do you see those?

9 A. Yes.

10 Q. And there's a number like starting -- well,
11 District 9 we've already looked at, 09; do you see
12 that?

13 A. Yes.

14 Q. And under that there's another number,
15 right?

16 A. Yes.

17 Q. Do you have any understanding what that
18 other number is -- so the top number, is that the
19 district number in each instance?

20 A. Yes.

21 Q. And there's a second number, do you see
22 that?

23 A. Yes, there's a second number.

24 Q. And do you have an understanding what that
25 second number is?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. And what is that?

4 MR. SHEEHY: I'm going to object on the
5 grounds of First Amendment privilege and instruct
6 the witness to not answer the question as doing so
7 would reveal internal communications within the
8 association.

9 BY MR. FRAM:

10 Q. Just at a general level, a generic level do
11 you understand what those numbers -- those second
12 numbers are showing without telling me anything
13 about their content as to particular districts?

14 A. Yes.

15 Q. What is that?

16 MR. SHEEHY: I'm going to instruct the
17 witness not to answer the question as that would
18 reveal internal communications within the
19 association.

20 BY MR. FRAM:

21 Q. Did you -- you created this JPEG, "Ohio-new
22 idea redraft"?

23 MR. SHEEHY: Objection, vague as to which
24 JPEG.

25 BY MR. FRAM:

1 ADAM PERRY KINCAID

2 Q. Well, Exhibit 19, you created that?

3 A. Yes.

4 Q. And did you generate the numbers that
5 appear on -- let me back up. And therefore you
6 created the numbers that appear under the districts,
7 correct?

8 A. Can you clarify what you mean by "created"?

9 Q. Well, I asked you if you created Exhibit 19
10 and you said yes. What did you do to create it?

11 MR. SHEEHY: I'm going to object on the
12 grounds of First Amendment privilege. If the answer
13 would reveal the internal communications within the
14 association, those communications are protected
15 under the First Amendment privilege.

16 THE WITNESS: Let me confer for just a
17 second.

18 MR. SHEEHY: Off the record.

19 (Whereupon a discussion was had
20 off the record.)

21 MR. FRAM: So we have a question you were
22 thinking about answering.

23 MR. SHEEHY: I'm going to maintain my
24 instruction to not answer the question on the
25 grounds of First Amendment privilege.

1 ADAM PERRY KINCAID

2 MR. FRAM: Okay.

3 BY MR. FRAM:

4 Q. The second numbers, are they PVI numbers?

5 MR. SHEEHY: Same objection, same
6 instruction.

7 BY MR. FRAM:

8 Q. I'd like to compare, if you could, please,
9 that second number for District 10 right around
10 Franklin County; do you see that?

11 A. Yes.

12 Q. It says 15.73; do you see that?

13 A. Yes.

14 Q. If you go back to Exhibit 8 and you look at
15 the PVI column.

16 A. Exhibit 8?

17 Q. Yes, please.

18 A. Okay.

19 Q. Where it says "D plus 16" for that open
20 District 10; do you see that?

21 A. Yes.

22 Q. Does that refresh your recollection, in
23 fact, the minus 15.73 basically if you rounded it
24 was the PVI -- it would be basically minus 15.73 for
25 Republicans, but plus 16 for Democrats?

1 ADAM PERRY KINCAID

2 A. I never said I didn't recall answering your
3 question that yes, I did know, and then I was
4 instructed not to answer.

5 Q. Thank you. I appreciate that. So you
6 don't need me to refresh your recollection. You
7 know what it means. You've just been told not to
8 answer?

9 A. Yes.

10 Q. Okay. That's fine.

11 MR. SHEEHY: Can we take a break?

12 MR. FRAM: Sure.

13 (A short break was had.)

14 BY MR. FRAM:

15 Q. I've got another question back on
16 Exhibit 7, those e-mails. There's one or two we
17 didn't finish up. On page 18304 there's an e-mail
18 from Mr. Whatman to you and Mr. DiRossi and Ms. Mann
19 on September 3, 2011 at 9:16 in the morning.

20 A. Uh-huh.

21 Q. By the way, I should mention, there's a lot
22 of Friday night, Saturday morning e-mails going on
23 here. Do you guys do that normally? Is that like a
24 normal work week for you or is there something going
25 on here?

1 ADAM PERRY KINCAID

2 A. It's not uncommon to work on a Saturday
3 morning in politics.

4 Q. Sunday night too?

5 A. On occasion.

6 Q. But on occasion. Was there an occasion
7 here? Was there a reason to be working on the
8 weekend?

9 A. I'd have to look at the dates to be sure.
10 I'd only be speculating. I don't have a clear
11 recollection of why we'd be working that Saturday
12 morning and Sunday evening.

13 Q. Let me just ask you a question, then, about
14 the e-mail itself. Mr. Whatman says "Adam, all
15 looks good on the surface"; do you see that?

16 A. I do.

17 Q. Do you recall what he was referring to,
18 "Looks good on the surface"?

19 MR. SHEEHY: Objection. You can answer the
20 precise question.

21 BY THE WITNESS:

22 A. "All looks good on the surface" would refer
23 to the map, this draft, the new map idea redraft.

24 Q. It says "Key is whether we can improve CD1
25 and CD14 at block level while keeping concepts

1 ADAM PERRY KINCAID

2 intact"; do you see that?

3 A. I do.

4 Q. Do you recall what he's referring to about
5 improving CD1?

6 MR. SHEEHY: Objection. I'm going to
7 instruct the witness to not answer the question as
8 that would be revealing internal associational
9 communications under the First Amendment privilege.

10 BY MR. FRAM:

11 Q. What about do you recall what he was
12 referring to when he talked about improving CD14?

13 MR. SHEEHY: You can answer the precise
14 question.

15 BY THE WITNESS:

16 A. Do I recall what he was referring to?

17 Q. Do you recall any -- do you recall anything
18 about the need to improve CD14?

19 A. Yes.

20 Q. What do you recall?

21 MR. SHEEHY: Same instruction, same
22 objection on the grounds of the First Amendment
23 privilege.

24 BY MR. FRAM:

25 Q. Do you see he says he wants to see these

1 ADAM PERRY KINCAID

2 improvements, but he says "While keeping concepts
3 intact"; do you see that?

4 A. I do.

5 Q. Do you know what concepts he was talking
6 about?

7 MR. SHEEHY: You can answer the precise
8 question.

9 BY THE WITNESS:

10 A. I don't have a specific recollection of
11 what those concepts would be. I'd have to speculate
12 about what specifically he means by that.

13 Q. Do you have any general idea of what the
14 concepts were?

15 MR. SHEEHY: You can answer the precise
16 question.

17 BY THE WITNESS:

18 A. Yes.

19 Q. What were they?

20 MR. SHEEHY: I'll instruct you to not
21 answer the question as that would reveal internal
22 associational communications protected under the
23 First Amendment.

24 BY MR. FRAM:

25 Q. Now, it appears that, going down that same

1 ADAM PERRY KINCAID

2 page on September 3, 2011 at 10:14 in the morning,

3 less than an hour later you responded to

4 Mr. Whatman; do you see that?

5 A. I do.

6 Q. And in that e-mail it says here "Revised

7 screenshots attached"; do you see that?

8 A. I do.

9 Q. Do you have any doubt that you sent that

10 e-mail?

11 A. No.

12 Q. Do you recall what your revisions were?

13 A. Let me turn the page. Not specifically. I

14 can see that there are two screenshots there, but

15 I'd have to look at them more closely.

16 Q. What about the revisions in the Hamilton

17 County area; do you see that?

18 A. I do.

19 Q. That would have been relevant to

20 improvements in CD1, correct?

21 A. Yes.

22 Q. So did you seek to try to implement

23 improvements in CD1 and 14 as Mr. Whatman had

24 suggested?

25 MR. SHEEHY: There I will instruct the

1 ADAM PERRY KINCAID

2 witness not to answer the question on the grounds of
3 the First Amendment privilege as doing so would
4 reveal internal communications.

5 BY MR. FRAM:

6 Q. Now, going to the next e-mail, Saturday,
7 September 3, 2011 at 11:54 in the morning from
8 Mr. Whatman to yourself, Mr. DiRossi, and Ms. Mann;
9 do you see that?

10 A. I do.

11 Q. It says "Adam, did we tell you we needed
12 the four-way split with the changes also"; do you
13 see that?

14 A. Yes.

15 Q. Do you have any reason to doubt you
16 received this e-mail?

17 A. No.

18 Q. Do you have any recollection of what the,
19 quote/unquote, four-way split was?

20 A. I don't have a recollection what the four-
21 way split was.

22 Q. Do you recall whether the four-way split
23 concerned the manner in which Columbus would be
24 split?

25 MR. SHEEHY: You can answer the precise

1 ADAM PERRY KINCAID

2 question asked, but also I'm going to pose an
3 objection to form.

4 BY THE WITNESS:

5 A. I don't have a clear recollection of what
6 the four-way split referred to. To answer your
7 question it's possible it referred to that, but I
8 don't have a clear recollection of whether or not
9 that's the case.

10 Q. If you go over to 18306, do you see an
11 e-mail from you September 3, 2011 at 11:55 in the
12 morning?

13 A. Yes.

14 Q. It says "Note attached"; do you see that?

15 A. Yes.

16 Q. Do you have any doubt you sent that e-mail?

17 A. No.

18 Q. Do you see it has some attachments to that
19 e-mail; do you see that?

20 A. Yes.

21 Q. And if you go to 18307, do see them?

22 A. Yes.

23 Q. And you see that the attachments are the
24 following, it says "four-way split.jpg"; do you see
25 that?

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. "Ohio changes four-way split.xls"; do you
4 see that?

5 A. Yes.

6 Q. And then "four-way split.zip"; do you see
7 that?

8 A. Yes.

9 Q. Would the zip file contain the block files
10 for the four-way split?

11 A. I have to speculate based off of the
12 previous e-mail that you sent that you brought up
13 that said dot zip which did contain block files. I
14 would have to speculate on whether or not because it
15 doesn't look like there's anything in this e-mail
16 chain to specifically what's in that zip file.

17 THE REPORTER: I need to go off the record.

18 (A short break was had.)

19 (Kincaid Exhibit 21 was marked
20 as requested.)

21 BY MR. FRAM:

22 Q. I'd like to mark next as Exhibit 21
23 LWVOH-00018333, a spreadsheet.

24 MS. RIGGINS: We're going to object on work
25 client privilege. This has work client product of

1 ADAM PERRY KINCAID

2 Mark Braden on here.

3 MR. FRAM: Sorry. This one here?

4 MS. RIGGINS: On Exhibit 21.

5 THE WITNESS: The second column in from the
6 right.

7 MS. RIGGINS: If he, in fact, did that
8 revision.

9 MR. FRAM: Yeah. As we have briefed to the
10 Court, I think, that's been disclosed since the --
11 this is a document I can indicate was provided to
12 public records request some years ago from -- you
13 can see 09 is the appendix number from that public
14 records request. It's been in the public domain for
15 about seven years. So if there's a work product,
16 it's long been waived.

17 MS. RIGGINS: Okay. This is produced from
18 the League of Women Voters. Thank you.

19 MR. FRAM: And produced by the League of
20 Women Voters.

21 BY MR. FRAM:

22 Q. All right. So have you ever seen this
23 document before?

24 A. No.

25 Q. Do you see where it says "four-way split

1 ADAM PERRY KINCAID

2 '08 presidential" in the middle?

3 A. Yes.

4 Q. And do you see going down to the fourth row
5 from the bottom where it says "Attempted GOP seats";
6 do you see that?

7 A. Yes.

8 Q. And do you see there it says 13?

9 A. Yes.

10 Q. Do you recall there ever being an attempt
11 to -- strike that.

12 Do you recall there ever being an attempt
13 to secure 13 GOP seats?

14 MR. SHEEHY: Objection and instruct the
15 witness to not answer the question as that would
16 reveal internal communications within the
17 association under the First Amendment.

18 MR. FRAM: And just so we're clear, the
19 witness has said he's never seen it before. So I'm
20 trying to understand how it's going to reveal
21 communications within the association.

22 MR. SHEEHY: You asked him if there were
23 any communications about an effort. So that to me
24 reveals internal communications.

25 BY MR. FRAM:

1 ADAM PERRY KINCAID

2 Q. Was there ever an attempt to secure 12
3 Republican seats in the redistricting?

4 MR. SHEEHY: Same objection, same
5 instruction.

6 BY MR. FRAM:

7 Q. Do you see that the only -- the only column
8 where attempted 13 seats exists is for the four-way
9 split; do you see that?

10 A. Yes.

11 Q. And all the others are 12; do you see that?

12 A. Yes.

13 Q. Does that help refresh your recollection as
14 to what the four-way split was about?

15 MR. SHEEHY: You can answer the precise
16 question.

17 BY THE WITNESS:

18 A. This does not, that picture does
19 (indicating).

20 Q. And what is that -- the pictures on
21 Exhibit 7; is that right?

22 A. Yes.

23 Q. And let's get our Bates numbers in a row
24 there. That's on 18307, correct?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. What's that refresh your recollection
3 about?

4 MR. SHEEHY: I'll issue a cautionary
5 instruction if in answering the question you reveal
6 internal communications within the association I
7 would instruct you to not answer the question under
8 the First Amendment.

9 BY THE WITNESS:

10 A. The difference between the previous map and
11 this map looks to be that Columbus is split four
12 ways in the Ohio changes four-way split map -- or
13 the four-way split map I should say. So...

14 Q. Thank you.

15 Do you have any recollection as to whether
16 splitting Columbus four ways would secure 13
17 Republican seats?

18 MR. SHEEHY: Same cautionary instruction.
19 If you can answer the question without revealing
20 internal communications within the association, you
21 may.

22 BY THE WITNESS:

23 A. Would you mind just repeating the question.

24 Q. Do you recall whether splitting Columbus
25 four ways would have secured 13 Republican seats?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: I'm going to go ahead and
3 actually just instruct the witness to not answer the
4 question on the grounds of the First Amendment
5 privilege, that answering the question in any way
6 would reveal internal communications within the
7 association.

8 BY MR. FRAM:

9 Q. Just so I understand how you understand the
10 association, Mr. Kincaid, that included Ohio State
11 elected officials, Republicans?

12 A. Yes.

13 MR. SHEEHY: Objection, calls for a legal
14 conclusion.

15 BY MR. FRAM:

16 Q. You understand. Okay.

17 So when you were communicating with
18 Mr. DiRossi or Ms. Mann is it your understanding you
19 were communicating with members of the association?

20 MR. SHEEHY: Objection, calling for a legal
21 conclusion, but you may answer.

22 BY THE WITNESS:

23 A. Yes.

24 (Kincaid Exhibit 22 and
25 Exhibit 23 were marked as

1 ADAM PERRY KINCAID

2 requested.)

3 BY MR. FRAM:

4 Q. First, 22 is a spreadsheet LWVOH-00018480

5 and 23 is the same Bates number but with the word

6 "Metadata" attached. Do you see under "Author" on

7 23 there's your name, "Adam Kincaid"; do you see

8 that?

9 A. I do.

10 Q. If you look back, did you create

11 Exhibit 22, the spreadsheet entitled "Ohio changes"?

12 A. I believe so, yes.

13 Q. Do you recall approximately when you
14 created it?

15 MR. SHEEHY: Objection to form.

16 BY THE WITNESS:

17 A. I don't have a specific recollection of
18 when I created this document.

19 Q. Do you see there's a reference in this
20 document where it says "New plan No. 1"; do you see
21 that?

22 A. Yes.

23 Q. Do you have a recollection of what that
24 means?

25 A. I have no specific recollection of what

1 ADAM PERRY KINCAID

2 that refers to.

3 Q. Looking at Exhibit 8, which was the
4 Franklin County sink hole spreadsheet; do you see
5 that?

6 A. Exhibit 8?

7 Q. Yes, please.

8 A. Okay.

9 Q. Compare that to Exhibit 22.

10 A. Okay.

11 Q. Can you tell us whether or not -- which
12 came first, Exhibit 8 or Exhibit 22, both of which
13 you created?

14 MR. SHEEHY: Objection to form.

15 (Witness reviewing document.)

16 BY THE WITNESS:

17 A. I have an assumption, but I don't have a
18 specific memory of which would have come first.

19 Q. What's your assumption?

20 MR. SHEEHY: Objection, calls for the
21 witness to speculate.

22 BY MR. FRAM:

23 Q. What do you think?

24 MR. SHEEHY: Same objection.

25 BY THE WITNESS:

1 ADAM PERRY KINCAID

2 A. I would -- new plan No. 1 likely came
3 second.

4 Q. Why do you think that?

5 A. In the final enacted map I believe
6 Congresswoman Sutton was drawn in with Congressman
7 Renacci and that's what's indicated in new plan
8 No. 1 and that's not indicated in the Franklin sink
9 hole.

10 Q. Do you recall why that was done?

11 A. I do not.

12 (Kincaid Exhibit 24 and
13 Exhibit 25 were marked as
14 requested.)

15 BY MR. FRAM:

16 Q. 24 is LWVOH-00018481, 25 is the same Bates
17 number with the word "Metadata." Look under
18 metadata and you see you're listed as the author; do
19 you see that, Exhibit 25?

20 A. Yes.

21 Q. Did you create Exhibit 24?

22 A. Yes.

23 Q. Notice this is entitled -- this is "Ohio
24 changes" but it's new plan No. 2; do you see that?

25 A. Yes.

1 ADAM PERRY KINCAID

2 Q. Did new plan No. 2 come after new plan

3 No. 1?

4 A. I believe so, yes.

5 Q. Actually, a serious question. Were they
6 both created at the same time as two options or was
7 one actually created after the other?

8 A. A good question I don't have an answer for.

9 Q. Okay.

10 Do you recall the difference between new
11 plans 1 and 2?

12 MR. SHEEHY: You can answer the precise
13 question.

14 BY THE WITNESS:

15 A. I don't have a specific recollection of
16 differences between new plan No. 1 and new plan
17 No. 2.

18 Q. Any general recollection?

19 MR. SHEEHY: Same instruction.

20 MR. FRAM: You're not Instructing here,
21 you're only objecting?

22 MR. SHEEHY: I told him you can answer the
23 precise question. That's What I said.

24 MR. FRAM: Fair enough. You got me
25 confused there.

1 ADAM PERRY KINCAID

2 BY THE WITNESS:

3 A. There appears to be differences between
4 Districts 4 and 5.

5 Q. What's the differences you can see?

6 A. In new plan No. 2 the 4th District is more
7 Republican than it is in new plan No. 1, and in new
8 plan No. 2 the 5th District is less Republican than
9 the 5th District in new plan No. 1.

10 Q. Do you recall any reasons why that
11 happened?

12 A. I have no recollection of why that was the
13 case.

14 Q. Did somebody ask you to create new plan 1?

15 MR. SHEEHY: You may answer the precise
16 question.

17 BY THE WITNESS:

18 A. I do not recall.

19 Q. Or new plan 2?

20 A. I do not recall.

21 Q. Do you have any idea what you were creating
22 new plan 1 and 2?

23 MR. SHEEHY: Same, you may answer the
24 precise question.

25 BY THE WITNESS:

1 ADAM PERRY KINCAID

2 A. I don't have a clear memory about whether
3 new plan No. 1 is the same as new idea or not. So I
4 couldn't answer the question as to whether -- why I
5 would be redrafting different versions.

6 Q. By the way, do you see Ohio GOP average
7 appears in new plan 1 and 2; do you see that?

8 A. Yes.

9 Q. Is that the same average that we saw
10 before, the same five elections?

11 MR. SHEEHY: Can you ask that again?

12 Sorry.

13 BY MR. FRAM:

14 Q. Before we walked through what the
15 average -- the GOP average was and we determined
16 they were the average of five elections based upon
17 the Excel function. So I'm just asking whether or
18 not the Ohio GOP average in Exhibits 22 and 24, new
19 plans 1 and 2 is the same GOP average?

20 A. The same formula?

21 Q. The same formula.

22 A. The formula would not have changed from
23 spreadsheet to spreadsheet. The formula would have
24 stayed the same.

25 Q. Thank you. That spares us one more

1 ADAM PERRY KINCAID

2 exhibit. We can move on.

3 I will ask you this question about plans 1
4 and 2. Two Congresspersons --

5 A. Sorry. Just to clarify, new plan No. 1 and
6 new plan No. 2?

7 Q. Yeah.

8 The two congresspersons at issue there were
9 Latta and Jordan. Was Jordan 4 and Latta 5?

10 MR. SHEEHY: Objection, form.

11 BY THE WITNESS:

12 A. The two districts --

13 Q. Yeah.

14 A. -- that are different in new plan No. 1 and
15 new plan No. 2 are 4 and 5.

16 Q. Right. And the Congresspersons at issue in
17 those districts were Latta and Jordan, I think; is
18 that right?

19 MR. SHEEHY: Objection, form.

20 BY THE WITNESS:

21 A. Those are the two members that would have
22 lived in those districts.

23 Q. So 4 became a little more Republican
24 benefiting Jordan a little bit; is that right?

25 A. I think that assumes that No. 2 was created

1 ADAM PERRY KINCAID

2 after No. 1. Based off our conversation, they were
3 drawn at the same time and show two different
4 options.

5 Q. But as between the two there was -- Jordan
6 was getting some benefit and Latta was getting some
7 detriment; isn't that right?

8 A. I think between the two districts new plan
9 No. 2 definitely had a stronger Republican district
10 than Mr. Jordan would live in than new plan No. 1.

11 Q. Does that help refresh your recollection as
12 to why the changes were being proposed between 1 and
13 2 in terms of favoring Latta and Jordan?

14 A. No.

15 (Kincaid Exhibit 26 was marked
16 as requested.)

17 BY MR. FRAM:

18 Q. So an e-mail, Bates No. LWVOH-00018322
19 through 25. Gmail, so, again, earliest in time
20 starts at the top. The top one is Ray DiRossi,
21 September 12, 2011 at 1:02 p.m. to you. I think
22 we've established that's your e-mail address,
23 correct?

24 A. Yes.

25 Q. Copying Heather Mann and Tom Whatman; do

1 ADAM PERRY KINCAID

2 you see that?

3 A. Yes.

4 Q. Have you seen this e-mail string before?

5 A. I don't recall seeing the e-mails up until
6 the Monday at 9:28 p.m. I don't recall seeing those
7 first two, but I do recall seeing the others.

8 Q. Do you have any doubt that you received or
9 sent the -- any of these e-mails where your name
10 appears?

11 A. Where my name appears as the sender I have
12 no doubt that I sent those e-mails.

13 Q. What about when your name appears as a
14 recipient, do you have any doubt that you received
15 them?

16 A. No.

17 Q. Looking at the Monday, September 12, 2011
18 e-mail from Ray DiRossi; do you see that?

19 A. Yes.

20 Q. Where it says "We are working to get
21 sign-ups from Speaker Batchelder and President
22 Niehuas on the Stivers edit and then we will be
23 done"; do you see that?

24 A. Yes.

25 Q. Do you recall any process of retaining

1 ADAM PERRY KINCAID

2 sign-ups from Speaker Batchelder and President
3 Niehuas?

4 A. That would have been something happening in
5 Ohio. That's not something that I would have been
6 involved with.

7 Q. Okay. Do you recall what the Stivers edit
8 was?

9 A. No.

10 Q. So you see the attachment, "LSC draft
11 3.zip"; do you see that?

12 A. Yes.

13 Q. Do you know what LSC stands for?

14 A. I can only speculate.

15 Q. Have you ever heard of Legislative Services
16 Commission in Ohio?

17 A. That would be what I would speculate.

18 Q. Were they responsible for creating the map
19 in the form that could be included in a bill
20 submitted to the General Assembly?

21 MR. SHEEHY: Objection, form.

22 BY MR. FRAM:

23 Q. You nodded. You have to answer audibly.

24 A. Could you repeat the question?

25 Q. Was LSC responsible for taking a map and

1 ADAM PERRY KINCAID

2 putting it into bill form?

3 MR. SHEEHY: Objection, form.

4 BY THE WITNESS:

5 A. That was my understanding.

6 Q. And were you provided copies of the LSC

7 versions of the maps? Let me back up. You were

8 provided versions of something called LSC draft 3;

9 do you see that?

10 A. I see that.

11 Q. Were you provided earlier versions of LSC
12 drafts?

13 A. I don't have any recollection of receiving
14 previous LSC draft maps.

15 Q. Did you receive any other LSC drafts?

16 MR. SHEEHY: Objection, form, asked and
17 answered.

18 BY THE WITNESS:

19 A. I don't have any recollection of any
20 other -- of receiving any other LSC drafts than this
21 specific one right here (indicating).

22 Q. Did you review it?

23 A. Could you --

24 Q. Did you review the LSC draft when you
25 received it?

1 ADAM PERRY KINCAID

2 A. Could you be more specific about what you
3 mean by "review"?

4 Q. Did you open the file, open the attachment?

5 A. Yes.

6 Q. Did you load it -- when you opened it was
7 there a map that you could immediately see or did
8 you have to load it into Maptitude to make it
9 beautiful?

10 A. Based off of the next e-mail, I would have
11 had to have loaded it into Maptitude to create the
12 changes sheet for it.

13 Q. Got it. Thank you.

14 Then that next e-mail, just for the record,
15 that's the one Monday, September 12, 2011 at
16 1:30 p.m.; is that right?

17 A. Yes.

18 Q. At this point in the map drawing process
19 were you creating changes sheets for Ray DiRossi?
20 Let me back up. In this e-mail here you say you're
21 giving him a changes sheet, correct?

22 A. I'm sending a changes sheet to Heather
23 Mann, Ray DiRossi, and Tom Whatman.

24 Q. Fair enough. What's a changes sheet?

25 MR. SHEEHY: I'm going to object to the

1 ADAM PERRY KINCAID
2 question on the grounds of the First Amendment
3 privilege as that would reveal internal
4 associational communications and instruct the
5 witness not to answer the question.

6 BY MR. FRAM:

7 Q. I understand you've been instructed, but
8 I'm going to ask you did you provide any other
9 changes sheets other than the one on September 12,
10 2011 at 1:30 p.m. as indicated at Bates No. 18322 in
11 Exhibit 26?

12 MR. SHEEHY: Same objection and same
13 instruction.

14 BY MR. FRAM:

15 Q. Turning to the next page -- hold on one
16 second.

17 (A short break was had.)

18 BY MR. FRAM:

19 Q. The next thing I want to talk about the
20 next e-mail. Let me say one more thing before I go
21 to the one I know you've been waiting for. We've
22 got this e-mail which you send on September 12, 2011
23 at 1:30 in the afternoon and you send it over to
24 DiRossi and Mann and Whatman, and I believe that
25 is -- if I'm reading the Gmail correctly, you're the

1 ADAM PERRY KINCAID

2 one attaching what's called the -- if you go over to
3 page 18323 and you look at the "Draft bill No.
4 3.jpg"; do you see that?

5 A. Yes.

6 Q. And "Ohio changes-LSC draft bill
7 No. 3.xls"; do you see that?

8 A. Yes.

9 Q. That came from you, right?

10 A. Yes.

11 Q. You were sending JPEG's and Excel

12 spreadsheets over to DiRossi, Whatman, and Mann

13 Monday, September 12, 2011; is that right?

14 A. Yes. That would have been based off of the
15 zip file that Ray sent me at 1:00.

16 Q. Right. You made a few changes and sent it
17 back to him?

18 A. No, I didn't make any changes. "Here's the
19 changes sheet" means that I created that changes
20 Excel sheet.

21 Q. And then here's the changes -- LSC could
22 use the changes sheet to create the final map?

23 A. No. It's just a -- that would have been
24 one of these changes sheets. That would have been a
25 draft of the Ohio changes sheet like in Exhibit

1 ADAM PERRY KINCAID

2 No. 24. That's what I would have sent back, not
3 changes to the map itself.

4 Q. Let me see if I understand for a clean
5 record. A changes sheet is what we've been calling
6 these spreadsheets and the examples are Exhibits 22
7 and 24; is that right?

8 A. Yes.

9 Q. Then after you sent the changes sheet over
10 do you know how that was turned into an actual map a
11 person could look at?

12 A. It was not changed into an actual map.

13 Q. Would an actual map be amended to reflect
14 what was in the changes?

15 A. No.

16 Q. I'm trying to understand how the changes
17 sheet fits in the map creation process?

18 A. The e-mail chain here Ray sent LSC draft 3,
19 which based off of the changes sheet that I'm
20 talking about in the next e-mail and the JPEG that's
21 here as well indicates that this was a block
22 assignment file that Ray sent over, LSC draft No. 3.
23 I would have created a changes sheet and this image
24 and that's what I sent back.

25 Q. Okay. And to create the image would you

1 ADAM PERRY KINCAID

2 take the block assignment file and load it into

3 Maptitude in order to generate the image?

4 A. Yes.

5 Q. And to generate the changes sheet would

6 that also be generated in Maptitude?

7 A. No.

8 Q. How would you generate the changes sheet?

9 A. The changes sheet would be generated by

10 exporting the demographic or political data from

11 Maptitude and copying and pasting it into an Excel

12 file.

13 Q. I see. So you did -- you did your own copy
14 and paste. You didn't use an export function within
15 Maptitude to create this spreadsheet?

16 A. Right.

17 Q. Now, was one of your jobs in the Ohio
18 congressional district redistricting work in 2011 to
19 generate the changes sheets?

20 MR. SHEEHY: I'm going to object on that
21 precise question and instruct the witness not to
22 answer the question as that would reveal the
23 internal workings of the association.

24 BY MR. FRAM:

25 Q. Let me ask the question a slightly

1 ADAM PERRY KINCAID

2 different way. We see that you generated certain
3 changes sheets. Did anybody else do so in
4 connection with Ohio redistricting for Congress in
5 2011?

6 MR. SHEEHY: Objection.

7 MR. FRAM: To your knowledge.

8 BY THE WITNESS:

9 A. To answer that question I'd need you to --
10 I don't know where it is in here anymore. Just to
11 try to get some clarification on your question,
12 would -- Exhibit 21, is that something you would
13 consider a changes sheet?

14 Q. I'm using your phrase changes sheet.

15 A. Okay.

16 Q. So it's not what I consider what matters.

17 A. Okay.

18 Q. I'm just trying to work with what you
19 understood -- the language you use. We've
20 identified I believe 22 and 24 as examples of
21 changes sheets you created.

22 A. Yes.

23 Q. So my question is did anybody else -- as
24 you understood what changes sheets were, did anybody
25 else create them?

1 ADAM PERRY KINCAID

2 A. Not to my knowledge.

3 Q. When you created them we've seen this

4 example -- let me back up. When you created them

5 you provided them to Mr. Whatman, Mr. DiRossi, and

6 Ms. Mann, correct?

7 A. In these instances, yes.

8 Q. Did you ever provide them to anybody else?

9 A. Yes.

10 Q. Who, please?

11 MR. SHEEHY: And there I think I'm going to
12 pose the instruction not to answer the question on
13 the grounds of the First Amendment privilege as it
14 goes to the internal workings of the association as
15 well as the identities.

16 BY MR. FRAM:

17 Q. Did you ever provide them to any Ohio
18 elected officials?

19 MR. SHEEHY: You can answer.

20 BY THE WITNESS:

21 A. Yes.

22 Q. Who, please?

23 A. The Ohio changes documents would be things
24 I would have provided to members of Congress.

25 Q. What about to Ohio state elected officials,

1 ADAM PERRY KINCAID

2 did you provide them to them at any time?

3 A. I have no recollection of sending Ohio
4 changes documents directly to Ohio elected
5 officials.

6 Q. And you used the word "directly." Do you
7 know whether or not Mr. DiRossi or Ms. Mann ever
8 provided any of your changes sheets to Ohio state
9 elected officials?

10 A. I do not know.

11 Q. Do you know if they were indirectly
12 provided any anyone to Ohio state elected officials?

13 A. I don't know if they were were not.

14 Q. Now I'll turn to Monday, September 12, 2011
15 at 9:28 p.m. Now, that's an interesting evening.
16 Do you recall the next day HB319 was to be
17 introduced in the Ohio General Assembly?

18 A. Okay.

19 Q. So this is Monday night.

20 A. Okay.

21 Q. At 9:28 in the evening you got an e-mail
22 from Mr. Whatman; do you see that?

23 A. Yes.

24 Q. And I take it this is the e-mail that you
25 said you looked at recently?

1 ADAM PERRY KINCAID

2 A. Yes. I saw that e-mail recently, yes.

3 Q. And the night -- just the night before the
4 bill's going to be introduced Mr. Whatman is asking
5 for one last change; do you see that?

6 A. Yes.

7 Q. Do you remember him doing that?

8 A. Yes.

9 Q. And the change was to put the Timken
10 headquarters in the 16th Congressional District; do
11 you recall that?

12 A. Yes.

13 Q. Do you recall why he wanted that change
14 made?

15 A. Only what's listed here in the e-mail.

16 Q. And how do you understand what the e-mail
17 is saying?

18 A. The Monday, 9:41 p.m. e-mail says "Very
19 important to someone, important to us all."

20 Q. Who is that someone?

21 A. I don't know.

22 Q. Do you know why they were important to
23 everybody?

24 A. I could only speculate. I don't know who
25 specifically he's talking to -- talking about.

1 ADAM PERRY KINCAID

2 Q. But you nonetheless -- you were the person
3 who said they could make that change; is that right?

4 A. Yes.

5 Q. You said that on September 12, 2011 at
6 9:36 p.m.; is that right?

7 A. Yes.

8 Q. And that was that e-mail. Again, every
9 time you're listed here as an author you have no
10 doubt you sent these e-mails that are in Exhibit 26?

11 A. I have no doubt.

12 Q. And every time you're listed as a recipient
13 you have no doubt that you received them; is that
14 right?

15 A. That's correct.

16 Q. And then after you said at 9:36 you could
17 do this Mr. DiRossi at 9:36 p.m. that evening,
18 almost the exact same moment, asks whether -- it
19 says "You do and get equivalence file to us ASAP";
20 do you see that?

21 A. I do.

22 Q. Does that equivalence mean the block files?

23 A. Yes. It's a term for a block --
24 equivalence file or block assignment file.

25 Q. And they needed that so that they could

1 ADAM PERRY KINCAID

2 create the file map; isn't that right?

3 A. Yes.

4 Q. Because that would tell you which census
5 blocks were in each district, correct?

6 A. Let me back up here just a bit. They would
7 need that to, you know, load the map back in. I
8 don't know if it was the final map or not. They
9 could have made further iterations after that point.

10 Q. Fair enough, but to make the change he was
11 asking for here, which was to move the Timken
12 headquarters into the 16th Congressional District,
13 they needed to have the block equivalence files,
14 correct?

15 A. Yes.

16 Q. And they would take those block equivalence
17 files and load them into Maptitude to generate the
18 new boundaries of the district, correct?

19 A. I don't know what software they were using
20 in Ohio. So I couldn't say yes to Maptitude, but
21 they would have needed the block assignment file of
22 those changes.

23 Q. And you would load the block assignment
24 files into whatever software you were using in order
25 to create the new district lines, correct?

1 ADAM PERRY KINCAID

2 A. You would need the block assignment file to
3 create any reports or legislative language, yes.

4 Q. And what about to create the contour of the
5 district?

6 A. Yes.

7 Q. On September 12, 2011 at 10:42 p.m. when
8 you e-mail back and say "File exporting now, you all
9 should have it in five minutes"; do you see that?

10 A. Yes.

11 Q. Are you talking about the block equivalency
12 file?

13 A. Yes.

14 Q. And then at 10:46 p.m. you say "Attached
15 are the screenshots of the statewide map, the Stark
16 County edit, and the .DBF block file"; do you see
17 that?

18 A. Yes.

19 Q. What's a DBF block file -- .DBF block file?

20 A. .DBF is simply a database file is what that
21 literally means. It's a form of block assignment
22 file that you would export from Maptitude.

23 Q. So we're talking about the same thing which
24 is the equivalency file, the block file, the .DBF
25 files, that's what you were sending over?

1 ADAM PERRY KINCAID

2 A. Block files are exported in CSV or DBF
3 typically. So that's why I was sending that over in
4 a DBF.

5 Q. Could you be more specific as to how the
6 block files were being -- strike that.

7 Can you be more specific as to the kind of
8 block files you were sending over? You were sending
9 over .DBF block files?

10 A. For whatever reason I told them I was
11 sending them a .DBF block file.

12 Q. .DBF files are used by Maptitude?

13 A. Yes.

14 Q. There's a reference to a "Stark County
15 edit"; do you see that?

16 A. Yes.

17 Q. Do you recall what that was?

18 A. Yes.

19 Q. What was that, please?

20 MR. SHEEHY: I'll issue a cautionary
21 instruction if you can answer the question without
22 revealing internal associational communications you
23 may. Otherwise I instruct you to not answer the
24 question on the grounds of the First Amendment
25 privilege.

1 ADAM PERRY KINCAID

2 THE WITNESS: I need to confer for just a
3 second.

4 (Whereupon a discussion was had
5 off the record.)

6 BY THE WITNESS:

7 A. The "Stark County edit" refers to the
8 Timken headquarters change.

9 Q. Thank you.

10 And then at 10:55 p.m., looking at page
11 18325, you send over the, quote/unquote, changes
12 file; do you see that?

13 A. Yes.

14 Q. Is that the same thing as these -- what we
15 were referring to before as changes sheets?

16 A. That would be referring to the same thing,
17 yes.

18 (Kincaid Exhibit 27 and
19 Exhibit 28 were marked as
20 requested.)

21 BY MR. FRAM:

22 Q. Let's have marked next 27 and 28. 27's
23 going to be NRCC-000013, and then 28 is going to be
24 the same number with the word "Metadata" attached.
25 The title on the document is "Ohio changes."

1 ADAM PERRY KINCAID

2 Exhibit 27 is another version -- another changes
3 sheet that you created?

4 A. Yes.

5 Q. And the metadata suggests that -- it
6 doesn't tell us really. Do you recall -- it
7 indicates Tom Whatman is the custodian; do you see
8 that in the metadata?

9 A. Yes.

10 Q. So you sent this over to Tom Whatman?

11 MR. SHEEHY: Objection to form.

12 BY MR. FRAM:

13 Q. Do you recall sending Exhibit 27 to Tom
14 Whatman?

15 A. I don't recall sending it to Tom.

16 Q. Was it your ordinary practice to send him
17 the changes sheets in the Ohio 2011 redistricting?

18 MR. SHEEHY: I'm going to object to that
19 question on the grounds of the associational
20 privilege under the First Amendment that it would
21 reveal internal communications of the association.

22 BY MR. FRAM:

23 Q. We've seen several other changes sheets you
24 sent to Tom Whatman. Do you recall whether you sent
25 him this one?

1 ADAM PERRY KINCAID

2 MR. SHEEHY: Objection, asked and answered.

3 BY THE WITNESS:

4 A. I don't recall sending him this document.

5 Q. But you do recall that you created

6 Exhibit 27; is that right?

7 A. Yes, this is a document I would have

8 created. I just don't recall specifically sending

9 this document to Tom Whatman.

10 Q. Do you recall any reason why you created

11 this document, Exhibit 27?

12 MR. SHEEHY: You may answer the precise
13 question.

14 BY THE WITNESS:

15 A. Yes.

16 Q. Why did you do so?

17 MR. SHEEHY: I'll instruct the witness not
18 to answer the question on the grounds of the First
19 Amendment privilege.

20 BY MR. FRAM:

21 Q. And is the Ohio GOP average here the same

22 five-election average we've been talking about

23 before, the formula?

24 A. It should be the same, yes.

25 Q. And do you see the PVI scorings in the far

1 ADAM PERRY KINCAID

2 right column?

3 A. Yes.

4 Q. Before you said there were different kinds
5 of PVI scorings. Do you know which one this is?

6 A. This is a Cook PVI here.

7 Q. You followed the same process here as for
8 the other changes sheets, you exported the data from
9 Maptitude and then cut and pasted it into Excel; is
10 that right?

11 A. It would have been made the same way as the
12 other ones.

13 Q. Do you recall if this document was created
14 before or after -- strike that. Never mind. I take
15 that back.

16 Is it your understanding this was a changes
17 sheet for the final version of HB319?

18 A. It would have to have been because I didn't
19 know it would be named HB319 until after it was
20 HB319.

21 Q. So in the final version of HB319 for
22 District 1 there was a Republican PVI net gain of 7;
23 is that right?

24 A. Yes, that's what this indicates.

25 Q. And for District 12 there was a Republican

1 ADAM PERRY KINCAID

2 net gain of 11 in PVI scoring; is that right?

3 A. That's what this indicates.

4 Q. And for 15 there was a net gain of 8; is
5 that right?

6 A. That's what this indicates.

7 Q. So that means that -- okay.

8 In the final Franklin County, Columbus
9 district that was actually numbered No. 3; is that
10 right?

11 A. That's correct.

12 Q. For the final HB319 a significant reason
13 for the Republican gains in Districts 12 and 15 was
14 the fact that many Democratic votes were now in new
15 District 3; is that right?

16 MR. SHEEHY: Objection, lack of foundation.

17 MR. FRAM: You've already testified on the
18 prior drafts. I'm just doing it for the final.

19 MR. SHEEHY: Same objection.

20 BY THE WITNESS:

21 A. Districts 12 and 15 you're asking how they
22 improved?

23 Q. No. I'm saying they -- the Republican
24 strength improved in Districts 12 and 15, right?

25 A. From the previous map?

1 ADAM PERRY KINCAID

2 Q. Correct.

3 A. Okay. From the current map here to HB319.

4 Q. Right. And current was the pre-

5 redistricting map?

6 A. The 2010 congressional map, yes.

7 Q. So between the 2010 congressional map and

8 HB319 Republican strength improved in Districts 12

9 and 15, correct?

10 A. That's what this indicates, yes.

11 Q. And a significant reason for that was the

12 fact that many Democratic votes were now in new

13 District 3, correct?

14 MR. SHEEHY: Objection, calls for the

15 witness to speculate.

16 BY MR. FRAM:

17 Q. I believe you already testified about the

18 PowerPoint the same issue. All right. So for

19 319 -- before you testified about the reasons for

20 the changes in 369, the final.

21 A. Okay.

22 Q. Here we're talking about 319.

23 A. Okay.

24 Q. And there we talked about the effect of

25 Democrats in Columbus being taken out of 12 and 15;

1 ADAM PERRY KINCAID

2 do you recall that?

3 MR. SHEEHY: Objection to form.

4 BY THE WITNESS:

5 A. I recall a district being created in
6 Franklin County, District 3.

7 Q. And did that improve Republican strength in
8 the final HB319 in 12 and 15?

9 MR. SHEEHY: Objection to form.

10 BY THE WITNESS:

11 A. Districts 12 and 15 became more Republican,
12 yes.

13 Q. And part of the reason they became more
14 Republican was because many Democratic votes were
15 now in new District 3, correct?

16 MR. SHEEHY: Objection, form and lack of
17 foundation.

18 BY THE WITNESS:

19 A. District 12 and 15 became more Republican
20 as a result of the drafting of 319 as compared to
21 the current map, that's what I would say.

22 Q. And in that drafting a new district was
23 created in Columbus, correct?

24 A. Yes.

25 Q. And that district was heavily Democrat,

1 ADAM PERRY KINCAID

2 correct?

3 MR. SHEEHY: Objection, lack of foundation.

4 BY MR. FRAM:

5 Q. If you look right here on this sheet here
6 you see "3-open"; do you see that?

7 A. Yes.

8 Q. And it provides scorings for the district.
9 If you go over to the PVI, it's D plus 16, correct?

10 A. Yes.

11 Q. So that's a heavily Democratic district, is
12 it not?

13 A. It's a Democrat district, yes.

14 Q. So that new district was a heavily
15 Democratic district and 12 and 15 are on either side
16 of it, correct?

17 A. They're in a proximate location to District
18 3.

19 Q. Right. And the votes that used to be in
20 what was now District 3 used to be in Districts 12
21 and 15, correct?

22 MR. SHEEHY: Objection, lack of foundation.

23 BY THE WITNESS:

24 A. Districts 12 and 15 became more Republican
25 in part because of the way 3 was created, but also

1 ADAM PERRY KINCAID

2 for other reasons as well.

3 Q. So some additional Republican areas were
4 also added, for example, some rural counties were
5 added to 12, right?

6 MR. SHEEHY: Objection to form.

7 BY THE WITNESS:

8 A. I'd have to see an old map and compare it
9 to the new map and tell you specifically what the
10 changes were for 12 and 15.

11 Q. But one of the reasons at least was the way
12 in which new District 3 was created helped make
13 Districts 12 and 15 more Republican; is that right?

14 MR. SHEEHY: Objection, form, lack of
15 foundation.

16 BY THE WITNESS:

17 A. I don't know how else to answer the
18 question.

19 Q. Well, it's simple math. You have Columbus
20 used to be in 12 and 15, right?

21 MR. SHEEHY: Objection to form.

22 BY THE WITNESS:

23 A. I think Columbus was split more than just
24 12 and 15 in the 2010 map, but I have to go back and
25 look.

1 ADAM PERRY KINCAID

2 Q. At least parts of -- parts of Columbus were
3 in 12 and 15, correct?

4 A. That is true.

5 Q. And then after -- after the finalizing of
6 319 a large portion of Columbus was taken out of 12
7 and 15 and put into new District 3, correct?

8 A. I would say that parts of 12 and -- well,
9 parts of Columbus were put into District 3.

10 Q. Parts of Columbus were put into District 3,
11 fair enough, and then as a result of that there were
12 fewer Democrat votes in Districts 12 and 15,
13 correct?

14 MR. SHEEHY: Objection to form.

15 BY THE WITNESS:

16 A. Districts 12 and 15 remained in Franklin
17 County. They did not move out of Franklin County.
18 They just had different parts of Franklin County
19 than they previously had had.

20 Q. And parts of what they didn't have before
21 were parts that were heavily Democratic, correct?

22 MR. SHEEHY: Objection to form.

23 BY THE WITNESS:

24 A. Yes. They would have had different parts
25 of Franklin County than they previously had had.

1 ADAM PERRY KINCAID

2 Q. And the parts they didn't have after the
3 redistricting were heavily Democratic parts,
4 correct?

5 MR. SHEEHY: Object to form, lack of
6 foundation.

7 BY THE WITNESS:

8 A. I answered you already that, yes, they had
9 different parts of Franklin County than they
10 previously had.

11 Q. Not only different parts. I'm saying
12 qualitatively parts that they did not have were
13 heavily Democratic parts?

14 MR. SHEEHY: Same objections.

15 BY THE WITNESS:

16 A. District 3 was made up of areas within the
17 city of Columbus. So it was -- District 3 has more
18 heavily Democrat parts of Franklin County than the
19 parts that were in 12 and 15.

20 Q. Thank you.

21 (Kincaid Exhibit 29 and
22 Exhibit 30 were marked as
23 requested.)

24 BY MR. FRAM:

25 Q. 29 is DiROSSI-000010, and then the same

1 ADAM PERRY KINCAID

2 document with "Metadata" at the end after the number
3 that's 30.

4 MR. SHEEHY: Have you sent around copies?

5 MR. FRAM: I should have. Did we send
6 around copies?

7 MR. SHEEHY: Oh, yeah. Sorry.

8 BY MR. FRAM:

9 Q. Let's start with the metadata. On the
10 metadata, Exhibit 30, it says here you're the
11 author; do you see that?

12 A. I do.

13 Q. It says it was modified -- created and
14 modified on October 3, 2011; do you see that?

15 A. Yes.

16 Q. Looking at 29, did you, in fact, create
17 Exhibit 29?

18 A. No.

19 Q. Who did?

20 A. I don't know.

21 Q. It says you're the author, but you did not
22 create this?

23 A. I did not create this document.

24 Q. Okay. Have you seen it before?

25 A. No.

1 ADAM PERRY KINCAID

2 Q. Do you see where it says under -- at the
3 very bottom where it says "R plus five is likely
4 Republican, number of districts R plus 5, 11"; do
5 you see that?

6 A. I do.

7 Q. Do you recall any discussion with anybody
8 as to whether or not 319 created 11 Republican
9 districts -- more than likely Republican districts?

10 MR. SHEEHY: We'll issue a cautionary
11 instruction. You can answer the question so long as
12 it does not reveal internal associational
13 communications that are protected under the First
14 Amendment.

15 BY THE WITNESS:

16 A. That was not my analysis.

17 Q. Fair enough.

18 (Kincaid Exhibit 31 was marked
19 as requested.)

20 BY MR. FRAM:

21 Q. 31 is a map that has the Bates
22 No. BLESSING-0012635 and then at the bottom it says
23 "10/27/11 Adam new map_001." To be clear, that
24 information came off the computer file that we got
25 from Ms. Blessing, it was not in the hard copy she

1 ADAM PERRY KINCAID

2 provided. We added the number from the computer
3 file to the hard copy for identification purposes
4 for the deposition.

5 A. Got it.

6 Q. But I'll say this, the word "Adam new map"
7 was in the file she gave us.

8 A. Uh-huh.

9 Q. A couple questions for you. First of all,
10 have you ever seen this document before?

11 A. No.

12 Q. Did you ever create something called "Adam
13 new map"?

14 A. No.

15 Q. Do you see those little squares that are
16 over various districts; do you see that?

17 A. Rectangles?

18 Q. Rectangles with numbers in them.

19 A. Yes.

20 Q. Are you familiar with the term "labels" in
21 Maptitude?

22 A. Yes.

23 Q. Are those labels?

24 A. Yes.

25 Q. Can you customize labels so you can have

1 ADAM PERRY KINCAID

2 different information about a district appear, hover
3 over a map?

4 A. Yes.

5 Q. And did you do that in your work in the
6 redistricting in Ohio in 2011?

7 MR. SHEEHY: You're asking if he did
8 labels?

9 BY MR. FRAM:

10 Q. Let me back up. There's a label
11 functionality in Maptitude, right?

12 A. Yes.

13 Q. I think it's one of the icons on the far
14 left. Do you see that whole list of them -- that
15 whole set of them going down the left-hand column?

16 A. Those aren't the label functions.

17 Q. How do you get the labels to appear?

18 A. I'd have to have Maptitude open to show you
19 how to do that.

20 Q. But there's not an icon on the left that
21 you click on, back then there wasn't?

22 A. I would not have used any of these icons to
23 do that. I see there's some label buttons there
24 I've never used. That's not how I would go about
25 creating labels in Maptitude.

1 ADAM PERRY KINCAID

2 Q. How did you go about creating labels?

3 A. There's just a different functionality
4 within Maptitude I would use. It's under a
5 different -- one of the top -- I think it's under
6 map or data view. I can't remember off the top of
7 my head. It's more instinctive.

8 Q. I see.

9 MR. SHEEHY: On the top left corner it says
10 "Licensed to Brian Crater." That's someone with
11 your firm?

12 MR. FRAM: Right. We got computer files --
13 just to make the record clear, we've said this in
14 other depositions, it's the same statement, which is
15 we received computer files, Maptitude computer files
16 from Blessing and others, but you've got to open
17 them somehow. It's like if you get a Word file or
18 Excel file you've got to use Excel or Word and to do
19 that you need a license. So we got a license and
20 that's how we opened it.

21 MR. SHEEHY: And that would have been with
22 2018 --

23 MR. FRAM: That's 2018, right, not 2011.

24 BY MR. FRAM:

25 Q. There was a label function in 2011, I take

1 ADAM PERRY KINCAID

2 it?

3 A. Yes. It's actually under display manager.
4 When I see over here on the left, it would be there,
5 that's where you would create the label. Display
6 manager is something you can move around on the
7 screen. It's not always there in Maptitude.

8 Q. Even though this is a 2018 version, this
9 functionality, these labels existed in 2011?

10 A. The ability to create labels existed in
11 Maptitude in 2011.

12 Q. In 2011 did you ever create labels that had
13 various election results in the label?

14 MR. SHEEHY: I'll issue a cautionary
15 instruction. You can answer the question so long as
16 it's not revealing internal associational
17 communications that are protected under the First
18 Amendment.

19 THE WITNESS: I think my methods would
20 be --

21 MR. SHEEHY: Covered. Okay. Then I
22 instruct the witness not to answer the question.

23 BY MR. FRAM:

24 Q. Just looking at District 1 for a minute and
25 you look at the bottom two numbers in the label.

1 ADAM PERRY KINCAID

2 A. Yes.

3 Q. 56.59 and 51.77.

4 A. Yes.

5 Q. Do you know if they would refer to
6 different indices or political election results?

7 MR. SHEEHY: Objection to form.

8 BY THE WITNESS:

9 A. I didn't create this map, this image, or
10 this file and I didn't create the labels. So I
11 don't know what these labels represent.

12 Q. I got it. So "Adam new map" is not
13 something you created?

14 A. This screenshot with these labels is not
15 something I created. I'm not telling you I didn't
16 create whatever the block assignment file is
17 underneath that, I don't remember, but this specific
18 image with these labels I did not create.

19 Q. So someone else could have taken a block
20 assignment file you created, loaded it into
21 Maptitude, and generated this image?

22 A. That's correct.

23 Q. I understand. And then they could have
24 used the display manager function in Maptitude to
25 create the labels that we see here?

1 ADAM PERRY KINCAID

2 A. That's correct.

3 MR. SHEEHY: Objection to form.

4 Mr. Fram, are we getting close to a
5 good breaking spot?

6 MR. FRAM: I'm kind of in the middle of
7 something, but it won't go forever.

8 MR. SHEEHY: That's reassuring.

9 MR. FRAM: I'll try and do my best. Here's
10 what I suggest, that we go through this exhibit --
11 yeah, let's go through this exhibit and then let's
12 see where we are, but we can take a little break
13 after this.

14 MR. SHEEHY: That's fine.

15 MR. FRAM: Is that all right?

16 MR. SHEEHY: That's fine.

17 (Kincaid Exhibit 32 and
18 Exhibit 33 were marked as
19 requested.)

20 BY MR. FRAM:

21 Q. 32 is a document with Bates
22 No. DiROSSI-0000525 and 33 is the same with
23 "Metadata" at the bottom. In the metadata you're
24 indicated as the author; do you see that?

25 A. That's what it says.

1 ADAM PERRY KINCAID

2 Q. Did you create Exhibit 32?

3 A. No.

4 Q. Do you have any idea who did?

5 A. I only have an idea based off of the other
6 name that's on here, but other than that, no.

7 Q. That's Ray DiRossi?

8 A. That's what it says, yes.

9 Q. Do you recall creating any changes sheets
10 in -- on or around November 2, 2011?

11 A. I have no specific recollection of creating
12 changes sheets for Ohio redistricting in November of
13 2011.

14 Q. Do you have any recollection at all of
15 creating any changes sheets in Ohio for Ohio
16 redistricting in either October or November of 2011?

17 MR. SHEEHY: Objection, form. You can
18 answer the precise question.

19 BY THE WITNESS:

20 A. I don't have any recollection of creating
21 changes sheets in October, November of 2011 for Ohio
22 redistricting. That doesn't mean I didn't. I just
23 don't remember.

24 (Kincaid Exhibit 34 and
25 Exhibit 35 were marked as

1 ADAM PERRY KINCAID

2 requested.)

3 BY MR. FRAM:

4 Q. 34 and 35. 34 is BLESSING-0013212 and 35
5 is the same Bates number with the word "Metadata."
6 The title of the document in the metadata is "Plan
7 comparison revised 12/14/11.xlsx." It has a created
8 date of 11/5/2011.

9 My question for you, Mr. Kincaid, is have
10 you ever seen this document before?

11 A. No.

12 MR. FRAM: Why don't we take our break now.

13 MR. SHEEHY: Thank you.

14 (A short break was had.)

15 (Kincaid Exhibit 36 and
16 Exhibit 37 were marked as
17 requested.)

18 BY MR. FRAM:

19 Q. We have two more exhibits, 36 and 37. 36
20 is Bates No. NRCC-000014, and then 37 is the same
21 Bates number with the word "Metadata." Mr. Kincaid,
22 on the metadata you're identified as the author of
23 this spreadsheet, Exhibit 36. So I'm going to ask
24 you to take a look at it and see if you recognize it
25 and if you're, in fact, the author.

1 ADAM PERRY KINCAID

2 (Witness reviewing document.)

3 BY THE WITNESS:

4 A. Could be. The font and format's a little
5 weird for what I would have created. So I couldn't
6 say with the same amount of certainty as with the
7 other documents that we've looked at.

8 Q. Is this a changes sheet?

9 A. No.

10 Q. What is this?

11 A. It's a demographic and political profile of
12 the districts -- the HB319 Ohio districts.

13 Q. And there's a date here on the metadata of
14 October 19, 2011; do you see that?

15 A. Yes.

16 Q. Do you have any recollection -- does this
17 help refresh your recollection of creating any
18 analysis of HB319 in October of 2011?

19 A. I believe you asked me before about changes
20 sheets. This is not a changes sheet based off of
21 the definition we've been using, but -- again, the
22 font is weird for something I would have generated,
23 but given that the metadata says I'm the author and
24 that's the date it was created, then it's entirely
25 possible that I created this.

1 ADAM PERRY KINCAID

2 Q. Look at the "PVI" column on the far right
3 on Exhibit 36; do you see that?

4 A. Yes.

5 Q. Do you have an understanding of what that
6 information is in that column?

7 A. Yes.

8 Q. And what kind of PVI data is that, please?

9 A. That would be a Cook PVI.

10 Q. And do you see "OH GOP average"; do you see
11 that?

12 A. Yes.

13 Q. Is that the Ohio GOP average that we've
14 been discussing previously?

15 MR. SHEEHY: Objection, form.

16 MR. FRAM: If you know.

17 BY THE WITNESS:

18 A. Without seeing the formula that would be my
19 assumption given that this is a different formatted
20 document than the other ones that we've looked at.

21 (Kincaid Exhibit 38 was marked
22 as requested.)

23 BY MR. FRAM:

24 Q. It just so happens we can mark as
25 Exhibit 38 the document that has the formula. I'll

1 ADAM PERRY KINCAID

2 represent to you what we did here is we went to
3 Excel and we made it so the formula could exist up
4 at the top bar on Exhibit 38; do you see that?

5 A. Yes.

6 Q. And you'll see here it doesn't use average,
7 it use "/5"; do you see that?

8 A. Uh-huh.

9 Q. That's another way of averaging those five
10 elections; is that right?

11 A. That's correct.

12 Q. That's something you, in fact, did using --
13 strike that.

14 That is something you, in fact, did using
15 Excel in your work in Ohio redistricting in 2011,
16 correct?

17 MR. SHEEHY: Objection, form.

18 BY THE WITNESS:

19 A. You're asking if I calculated the OH GOP
20 average in 2011?

21 Q. I'm saying you used the slash 5 approach
22 rather than the average in terms of creating
23 functions in Excel?

24 A. It seems like I would have, yes.

25 Q. You see there are five variables in the

1 ADAM PERRY KINCAID

2 function; do you see that?

3 A. Yes.

4 Q. And they correspond to the different -- the
5 letters correspond to the different columns in the
6 Excel spreadsheet, correct?

7 A. Yes.

8 Q. And, again, these are the same five
9 elections that we saw in the previous formula,
10 correct?

11 A. Yes.

12 Q. Namely, the 2008 presidential, the 2004
13 presidential, the 2010 governor, the 2006 attorney
14 general, the 2006 auditor, correct?

15 A. Yes.

16 Q. And not the 2010 attorney general, correct?

17 A. That's correct.

18 Q. So it's the same formula that appeared in
19 the exhibit that we previously saw that you said you
20 used, correct?

21 MR. SHEEHY: Object to form.

22 BY THE WITNESS:

23 A. Yes.

24 Q. Does this help refresh your recollection
25 that you, in fact, created Exhibit 36?

1 ADAM PERRY KINCAID

2 A. Again, I couldn't tell you -- based off the
3 metadata it appears that I created this. The format
4 is odd for something I would have created. So...

5 Q. And also the formula's the same?

6 A. Yes. I mean, I don't have an IP claim to
7 averaging five races together. So someone else
8 definitely could have done that.

9 Q. I didn't say there was a property rights
10 violation here.

11 A. I'm saying it wasn't exclusive to me to
12 average five races.

13 Q. Do you know if anybody else was using Excel
14 to average those five races?

15 A. I have no idea. I was just saying.

16 Q. Do you recall communicating the information
17 in Exhibit 36, whether in this font or some other
18 font, to anyone in 2011?

19 MR. SHEEHY: I'm sorry. I missed the
20 question. Could you repeat the question.

21 BY MR. FRAM:

22 Q. You said the font might not have been your
23 font. My question is putting the font aside, the
24 content of the document, do you recall communicating
25 it to anyone in 2011?

1 ADAM PERRY KINCAID

2 A. I don't explicitly remember communicating
3 this document to anybody else in 2011, but I do
4 recall communicating this data to other people in
5 2011.

6 Q. "This data" being which data, please?

7 A. The data represented on the spreadsheet.

8 Q. And to whom did you communicate it, please?

9 MR. SHEEHY: I'm going to instruct the
10 witness to not answer the question if in answering
11 the question you're revealing internal
12 communications within the association under the
13 First Amendment privilege.

14 BY THE WITNESS:

15 A. I would have communicated it within the
16 association. So...

17 Q. Did that include communications to --
18 within your definition of association that
19 included -- as of October 2011 that included Ray
20 DiRossi?

21 MR. SHEEHY: Same objection with the
22 instruction you can answer the question if it
23 doesn't reveal internal associational
24 communications.

25 BY THE WITNESS:

1 ADAM PERRY KINCAID

2 A. Can you repeat the question?

3 Q. When you said you communicated within the
4 association I just wanted to be specific. Did that
5 include communication to Ray DiRossi?

6 A. You're asking if I would include Ray
7 DiRossi in the definition of the association?

8 Q. Yes, as you understood it.

9 A. Yes. I think I testified to that already.

10 Q. And Heather Mann?

11 A. Yes.

12 Q. And Tom Whatman?

13 A. Yes.

14 Q. Okay then.

15 Is it your understanding that the
16 information in Exhibit 36 concerned HB319 as
17 enacted?

18 A. Based off of the date this was created and
19 the label of HB319, then my expectation would be
20 that this is based off of 319 as enacted, yes.

21 (Kincaid Exhibit 39 and
22 Exhibit 40 were marked as
23 requested.)

24 BY MR. FRAM:

25 Q. So for 39 it's DiROSSI-0000142 and for 40

1 ADAM PERRY KINCAID

2 it's same Bates number with the word "Metadata." On
3 the metadata you're listed as the author?

4 A. That's what it says.

5 Q. Have you ever seen 39 before?

6 A. I've never seen this document.

7 Q. You didn't create 39?

8 A. Exhibit 39, no, I did not create this
9 document.

10 Q. That's not your analysis?

11 A. This is not my analysis.

12 Q. Okay. Fine.

13 MR. FRAM: No further questions. Thank you
14 for your time. Subject to the following, I should
15 add. Number one, maybe there will be a little
16 redirect here now, in which case I'll have some
17 follow-up questions to that and, of course, I
18 wouldn't be surprised if there's some further
19 discussion among the lawyers and the Court about the
20 First Amendment privilege which could result in our
21 needing to question you again. So concluding at
22 this time is, of course, without waiver our right to
23 come back and ask you more questions if all the
24 instructions around the First Amendment privilege
25 are resolved in a way that results in further

1 ADAM PERRY KINCAID

2 discovery.

3 MR. SHEEHY: Understood. We'll deal with
4 that when it comes, if it comes.

5 Can we go off the record and take a few
6 minutes to see if we want to ask any redirect?

7 MR. FRAM: Sure.

8 (A short break was had.)

9 MR. SHEEHY: We don't have any questions.
10 On behalf of Mr. Kincaid, we don't have any
11 questions.

12 MS. RIGGINS: Nothing.

13 MS. McKNIGHT: No questions.

14 (Whereupon, at 5:51 p.m. the
15 taking of the instant deposition
16 ceased.)

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ADAM PERRY KINCAID

ACKNOWLEDGEMENT OF DEPONENT

I, ADAM PERRY KINCAID, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on the 4th day of December, 2018; that I have read the foregoing transcript of my deposition consisting of pages 1 through 247, inclusive, and affix my signature to same.

ADAM PERRY KINCAID

DATE

1 ADAM PERRY KINCAID

2 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

3 I, TINA M. ALFARO, Registered Professional
4 Reporter, Certified Realtime Reporter, and Notary
5 Public, the officer before whom the foregoing
6 deposition was taken, do hereby certify that the
7 foregoing transcript is a true and correct record of
8 the testimony given; that said testimony was taken
9 by me stenographically and thereafter reduced to
10 typewriting under my direction; that reading and
11 signing was requested; and that I am neither counsel
12 for, related to, nor employed by any of the parties
13 to this case and have no interest, financial or
14 otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal this 11th day of
17 December, 2018.

18
19 My Commission expires October 31, 2020.
20
21

22 _____
23 NOTARY PUBLIC IN AND FOR THE
24 DISTRICT OF COLUMBIA
25

1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

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